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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 159

UNITED STATES OF AMERICA, APPELLANT,

vs.

ERNEST KING BRAMBLETT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED JUNE 22, 1954
PROBABLE JURISDICTION NOTED OCTOBER 18, 1954

SUPREME COURT OF THE UNITED STATES

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1 In United States District Court for the District of Columbia

HOLDING A CRIMINAL TERM

(Grand Jury Impaneled on September 2, 1952, and Sworn in on September 3, 1952)

Criminal No. 971-53. Grand Jury Original. Vio. 18 U. S. C. 1001

UNITED STATES OF AMERICA

v.

ERNEST KING BRAMBLETT

Indictment

Filed June 17, 1953

COUNT ONE

In order to accomplish the purpose of a scheme, defendant Ernest King Bramblett, on or about August 27, 1949, as a member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated August 27, 1949, in which he designated Margaret M. Swanson to be a clerk to him in the discharge of his official and representative duties to take effect beginning September 1, 1949, said clerk to receive compensation at the basic rate of $4,700.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this Clerk-Hire Allowance form to be paid to Margaret M. Swanson.

Defendant Bramblett, having so presented said Clerk-Hire Allowance form, did, on or about June 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including June 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret

2 M. Swanson during June, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation as such, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT TWO

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about July 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including July 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during July 1950 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT THREE

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about August 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including August 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during August 1950
3 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT FOUR

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about September 29, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including September 29, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation

that the said Margaret M. Swanson during September 1950 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT FIVE

Defendant Brambblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about October 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including October 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation

4 that the said Margaret M. Swanson during October 1950 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT SIX

Defendant Brambblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about November 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including November 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during November 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT SEVEN

Defendant Brambblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about December 20, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of

the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including December 20, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during December
5 1950 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

Count Eight

On or about November 1, 1950, defendant Bramblett, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsified by a scheme a material fact. To accomplish the purpose of the scheme, the defendant, as a member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated November 1, 1950, in which he designated Olga Hardaway to be a clerk to him in the discharge of his official and representative duties to take effect beginning November 1, 1950, said clerk to receive compensation at the basic rate of $2,200.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this Clerk-Hire Allowance form to be paid to Olga Hardaway. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such clerk beginning November 1, 1950, the true fact being that defendant did not then intend the said Olga Hardaway then to begin to be such a clerk.

Count Nine

Defendant Bramblett, having presented, as alleged in Count Eight, the Clerk-Hire Allowance form described therein, did, on or about November 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including November
6 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during November 1950 was a clerk to defendant in the discharge of his official

and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

Count Ten

The allegations of Count Eight are repeated here but charge the offense on or about December 1, 1950, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, undated, designating Olga Hardaway to succeed herself to take effect beginning December 1, 1950, and to receive compensation at the basic rate of $600 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning December 1, 1950, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

Count Eleven

Defendant Bramblett, having presented, as alleged in Count Ten, the Clerk-Hire Allowance form described therein, did, on or about December 20, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including December 20, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation

7 that the said Olga Hardaway during December 1950 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

Count Twelve

The allegations of Count Eight are repeated here but charge the offense on or about January 1, 1951, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, dated January 1, 1951, designating Olga Hardaway to succeed herself to take effect beginning January 1, 1951, and to receive compensation at the basic rate of $600 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning January 1, 1951, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT THIRTEEN

Defendant Bramblett, having presented, as alleged in Count Twelve, the Clerk-Hire Allowance form described therein, did, on or about January 31, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including January 31, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during January 1951 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

8 COUNT FOURTEEN

Defendant Bramblett, having presented, as alleged in Count Thirteen, the Clerk-Hire Allowance form described therein, did, on or about February 28, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including February 28, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during February 1951 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT FIFTEEN

The allegations of Count Eight are repeated here but charge the offense on or about March 1, 1951, by the presentation by defendant Bramblett, of a Clerk-Hire Allowance form, undated, designating Olga Hardaway to succeed herself to take effect beginning March 1, 1951, and to receive compensation at the basic rate of $4100 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning March 1, 1951, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT SIXTEEN

Defendant Bramblett, having presented, as alleged in Count Fifteen, the Clerk-Hire Allowance form described therein, did, on or about March 30, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency
9 of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including March 30, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during March 1951 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT SEVENTEEN

The allegations of Count Eight are repeated here but charge the offense on or about April 1, 1951, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, dated April 1, 1951, designating Olga Hardaway to succeed herself and Janet Dunnett to take effect beginning April 1, 1951, and to receive compensation at the basic rate of $800 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning April 1, 1951, to succeed herself and Janet Dunnett, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT EIGHTEEN

Defendant Bramblett, having presented, as alleged in Count Seventeen, the Clerk-Hire Allowance form described therein, did, on or about April 30, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify
10 by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including April 30, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during April 1951 was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being

that the said Olga Hardaway was not such a clerk, as defendant well knew.

LEO A. ROVER,
United States Attorney in and for the District of Columbia.

A true bill:

THADDEUS N. SANDIFER,
(Deputy) Foreman.

11 In the United States District Court
[Title omitted].
[File endorsement omitted.]

Motion in Arrest of Judgment, for Acquittal, and for a new Trial

Filed February 15, 1954

1. The defendant moves the Court to arrest the judgment for the reason that the indictment fails to state an offense against the United States in that:

a. The indictment fails to charge that the defendant falsified any fact within the jurisdiction of a department or agency of the United States.

b. The indictment fails to charge the commission of any offense within three years next preceeding the finding thereof.

c. The indictment fails to charge the falsification of any past or presently existing fact.

2. In the alternative the defendant moves the Court to enter a judgment of acquittal of the offenses charged in Counts 1 through 7 of the indictment on the ground that as a matter of law the evidence is insufficient to sustain a conviction in that:

a. There is no evidence that the defendant falsified any fact within the jurisdiction of any department or agency of the United States.

b. There is no evidence that the defendant committed any offense within three years next preceding the finding of the indictment.

12 c. There is no evidence that defendant falsified any past or presently existing fact.

d. There is no credible evidence to support the verdict.

3. In the alternative the defendant moves the Court to grant him a new trial for the following reasons:

a. The Court erred in denying the defendant's motion for acquittal made at the conclusion of the evidence.

b. The verdict is contrary to the weight of the evidence.

c. The verdict is not supported by substantial evidence.

d. The Court erred in permitting counsel for the government throughout the trial to ask leading questions of its own witnesses.

e. The Court erred in denying defendant's motion for a mistrial after dismissal of Counts 8 through 18 of the indictment.

f. The Court erred in charging the jury and in refusing to charge the jury as requested.

For the foregoing reasons, and for such other reasons as will be urged at the time of hearing, defendant respectfully moves that this Court grant the motion in arrest of judgment, for acquittal, or for a new trial.

EDWARD BENNETT WILLIAMS,
Edward Bennett Williams,
1000 Hill Building, Washington 6, D. C.,
Attorney for Defendant.

[Certificate of service omitted in printing.]

13 In United States District Court for the District of Columbia

Criminal No. 971-53

UNITED STATES OF AMERICA
v.
ERNEST KING BRAMBLETT

Opinion

[File endorsement omitted.]

Filed April 14, 1954

This case is before the Court on defendant's motion in arrest of judgment (Rule 34, Federal Rules of Criminal Procedure) or, in the alternative for a judgment of acquittal (Rule 29, F. R. Cr. P.) or, in the alternative, for a new trial (Rule 33, F. R. Cr. P.).

The defendant in this case was charged in an eighteen-count indictment with violations of Title 18, Section 1001, United States Code, and was convicted by a jury on Counts One through Seven. On oral motion of the defendant during the course of the trial, the Court ordered that a judgment of acquittal be entered on Counts Eight through Eighteen, inclusive. Title 18, Section 1001, U. S. C., reads as follows:

"Whoever, *in any matter within the jurisdiction of any department or agency of the United States* knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent state-

ments or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749." [Emphasis supplied.]

The indictment charges in Counts One through Seven that the defendant did, on or about August 27, 1949, present to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated August 27, 1949, and did thereby knowingly and willfully falsify, by a scheme, a material fact; that the material fact allegedly falsified by the scheme was the representation by that designation that Margaret M. Swanson was a clerk (and entitled to receive compensation) to defendant in the discharge of his official and representative duties as a member of Congress, from the 11th District, State of California, the true fact being that the said Margaret M. Swanson was not such a clerk, as the defendant well knew. The first seven counts allege that the defendant did, beginning on June 30, 1950, and for each succeeding month thereafter through December 20, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, knowingly and willfully falsify by a scheme a material fact, by knowingly and willfully continuing in full force and
14 effect the designation contained in the said Clerk-Hire Allowance form as aforementioned.

The defendant's motions for acquittal or, in the alternative, for a new trial, are denied.

The defendant's principal contention in connection with his motion in arrest of judgment, and the only one in which the Court finds any merit, is that the indictment fails to state an offense against the United States, in that the indictment fails to charge the defendant with falsifying any fact "within the jurisdiction of a department or agency of the United States." The defendant contends that the Disbursing Office of the House of Representatives, to which the false statement was allegedly made, being an office of the legislative branch of the Government, does not fall within the definition of "any department or agency of the United States." His contention is that it was the intent of Congress to limit the words "department or agency," when used in a section within Title 18, to include only the executive branch of the Government unless the context of the statute specifically included within its scope the legislative or judicial branches of the Government.

The defendant in support of his contention urges that, when there is doubt and uncertainty concerning the scope or construction of a criminal statute, that doubt must be resolved in favor of the

defendant. In other words, the defendant contends that criminal statutes should be strictly construed. The Government takes the position that, in those cases wherein that principle is expounded, the language of the statute under inquiry is ambiguous and that the rule as to strict construction does not require that the statute be given the narrowest possible meaning nor that the congressional intent be disregarded.

The Government urges that Title 18, Section 1001, *supra*, is not ambiguous, and that the legislative history of the Act justifies the conclusion that Congress did not intend the statute to be limited to the executive branches of the Government only.

Title 18, United States Code, Section 1001, *supra*, originated as the Act of March 2, 1863, 12 Stat. 696, and later became Section 5438 of the Revised Statutes[1] under the codification of December 1, 1873, approved June 22, 1874. An amendment of May 30, 1908, 35 Stat. 555, changed the penalties for the offenses. The Act of March 4, 1909, 35 Stat. [illegible], 1095, was "An Act to codify, revise and amend the [illegible] of the United States." Former Section 5438 of the Revised Statutes received the section number 35, "Presenting false claims." Section 35 read in part as follows:

"Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, *to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof*, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fradulent or fictitious statement or entry * * * shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. * * * [Emphasis supplied.]

Congress then passed the amendment of October 23, 1918, 40 Stat. 1015, since unsuccessful attempts had been made under Section 35 to punish persons committing frauds against some of the corporations created by Congress during World War I in which the Government owned all or part of the stock. The amended section added, among other things, the words "any corporation in which the United States of America is a stockholder." The pertinent part of Section 35 then read as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States,

[1] R. S., p. 1054, 1873-1874; 2nd Ed. 1878

or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the *intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder*, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fradulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fradulent or fictitious statement or entry * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both. * * *" [Emphasis supplied.]

Up to this point, it will be noted that Section 35 provided that whoever "shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States or any department or officer thereof, or any corporation in which the United States of America is a stockholder" should be punished as provided, and also provided punishment for false statements or representations made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder."

As the later amendments are referred to, it will be noted that the broad language just mentioned as to false statements has been seriously limited, and the language in Title 18, United States Code, Section 1001, is now: "in any matter within the jurisdiction of any department or agency of the United States," language substantially different from: "Government of the United States, or any department or officer thereof."

On June 18, 1934, Title 18, Section 35, was amended (48 Stat. 996) so as to read:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United

States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, *in any matter within the jurisdiction of any department or agency of the United States* or of any corporation in which the United States of America is a stockholder * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both. * * *" [Emphasis supplied.]

This amendment eliminated the words "cheating and swindling or defrauding" and embraced false and fraudulent statements or representations where these were knowingly and willfully used in documents or affidavits "in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder," there being no restriction to cases involving pecuniary or property loss to the Government. See *United States* v. *Gilliland, et al.*, 312 U.S. 86. In the case, the Court was concerned with the
17 effect of the 1934 amendment to Section 35, but did not decide the scope of the words "department or agency" since the false and fraudulent statements charged there related "to a matter within the jurisdiction of the Department of the Interior, the Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas." (P. 90.)

Prior to the 1934 amendment, the Secretary of the Interior sought legislation to aid the enforcement of laws relating to the functions of the Department of the Interior and, in particular, to the enforcement of regulations under Section 9c of the National Industrial Recovery Act of 1933 with respect to the transportation of "hot oil." The Secretary's effort was due, as he stated, to the lack of a law under which prosecution might be had "for the presentation of false statements."

The bill which was passed by Congress, however, was amended in its final stages so as to require "intent to defraud the United States." This bill was returned by the President without his approval, for the reason that the offense as defined was covered by existing law, which provided for more severe punishment than that proposed by the bill.

Another measure was then proposed by the Secretary of the Interior which would obviate these objections and accomplish the purpose of including the presentation of false statements in relation to "hot oil." The bill was then passed and approved and included, with other amendments of Section 35, the 1934 amendment above referred to, omitting and eliminating words which had been deemed to make the former provision applicable only to cases where pecuniary or property loss to the Government had been caused. See *United States* v. *Cohn*, 270 U. S. 339, 346.

Section 35 was again amended April 4, 1938 (52 Stat. 197) but that amendment merely divided Section 35 into Subsections (A), (B) and (C), and separated them into paragraphs (18 U. S. C. A., Sec. 80, et seq.).

The Act of June 25, 1948 (62 Stat. 683), revising the Criminal Code, divided Section 80 U. S. C. A. into two sections. The provisions against making false claims were set out in Title 18, U. S. C. 287; and the provisions against making false statements, with which we are here concerned, were set out in Section 1001 of that Title, *supra*.

18 The Government argues that it was the intent and purpose of Congress, throughout the legislative history, to include all branches of the Government and that the language of Section 1001 is plain and completely comprehensive, and that this apparent intention should not be frustrated by construction.

The Government cites *Spivey* v. *United States*, 109 F. (2nd) 181 (5th Circuit, 1940); 310 U. S. 631, cert. denied, wherein Section 80, formerly Section 35 (the forerunner sections of Section 1001) was under consideration. The Court there said:

"The force and effect of statutes of this kind, designed to prevent frauds upon the Government may not be frittered away by a mere literal construction" (p. 184).

That Court went on to say:

"While Criminal Statutes, may not by process of construction, be extended beyond their reasonable and natural meaning, neither may they be, by the same process, deprived of their natural meaning" (p. 185).

The Court there, however, was not concerned with the scope of the words "department or agency" since that case involved the making of false and fictitious statements to the Commodity Credit Corporation, a corporation in which "the United States has a proprietary interest."

It seems significant to the Court that Title 18, Section 287 (formerly the first part of old Section 35) provides penalties against any one who "makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim * * * knowing such claim to

be false." This language is all-inclusive and has remained substantially the same. See 1934 Act, *supra*, and Section 287.

Section 1001 provides penalties for making false statements "in any matter within the jurisdiction of any department or agency of the United States." This language is not all-inclusive and has not remained the same. The change in the language to that of Section 1001 by the 1934 Act, together with the definition in Section 6 of Title 18, *infra*, seems to the Court most illuminating and, when taken into consideration in connection with the reviser's notes hereinafter referred to, conclusive.

Both the Government and the defendant agree that this is a case of first impression with regard to the scope of the words
19 "department or agency" as found in Section 1001. No case, either *nisi prius* or appellate, in which an attempt has been made to apply Section 1001 to either the legislative or judicial branches of the Government, has been called to the attention of the Court.

When Congress, in 1948, passed the Act to revise, codify, and enact into positive law Title 18 of the United States Code, entitled "Crimes and Criminal Procedure," it set out words in Title 18, Section 6, which define "department" and "agency" as follows:

"The term 'department' means one of the executive departments enumerated in section 1 of Title 5, *unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.*

"The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, *unless the context shows that such term was intended to be used in a more limited sense.*" [Emphasis supplied.]

Going to Section 1 of Title 5 (referred to in the first paragraph of Section 6, Title 18), we find that the departments enumerated in said Section 1 are as follows:

The Department of State.
The Department of Defense.
The Department of the Treasury.
The Department of Justice.
The Post Office Department.
The Department of the Interior.
The Department of Agriculture.
The Department of Commerce.
The Department of Labor.

To these has been added, by amendment, The Department of Health, Education and Welfare (1953 Reorganization Plan No. 1, 18 F. R. 2053, 67 Stat. 631).

It seems apparent to the Court, from a reading of these definitive sections (Section 6 of Title 18 and Section 1 of Title 5), that Congress intended to limit the words "department or agency" to the executive branches of the Government unless the context shows that such term was intended to include the legislative or judicial branches of the Government.

Significant also are the reviser's notes to Section 6, Title 18, reading as follows:

"This section defines the terms 'department' and 'agency' of the United States. The word 'department' appears 57 times in Title 18, U. S. C., 1940 ed., and the word 'agency' 14 times. It was considered necessary to define clearly these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See *United States* v. *Germaine*, 1878, 99 U. S. 508, 25 L. Ed. 482, for definition of words 'department' or 'head department.')

"The phrase 'corporation in which the United States has a proprietary interest' is intended to include those governmental corporations in which stock is not actually issued, as well as those in which stock is owned by the United States. It excludes those corporations in which the interest of the Government is custodial or incidental. 80th Congress House Report No. 304."

In many instances wherein the words "department or agency" appear within a section of Title 18, the reviser makes reference to the definitive Section 6 of said Title.

Among sections in Title 18, where the context shows that the term "department or agency" was intended to describe branches of the Government other than the executive, are the following:

Section 201:

"Whoever promises, offers, or gives any money or thing of value * * * for the payment of money or for the delivery or conveyance of anything of value, to any officer or employee or person *acting for or on behalf of the United States, or any department or agency thereof*, in any official function, *under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof* * * *" [Emphasis supplied.]

Section 283:

"Whoever, *being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives*, acts as an agent or attorney for prosecuting any claim against the United States * * *" [Emphasis supplied.]

Section 602:

"Whoever, *being a Senator or Representative* in, or Delegate *or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof*, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States * * *" [Emphasis supplied.]

Section 1505:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before *any department or agency of the United States*, or in connection with any inquiry or investigation being had by *either House, or any committee of either House, or any joint committee of the Congress* * * *" [Emphasis supplied.]

The Government has cited to the Court Title 18, U. S. C., Section 1017, wherein the words "department or agency" appear, but there is no specific reference to the other coordinate branches of the Government. Section 1017 reads as follows:

"Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate, instrument, commission, document, or paper or with knowledge of its fraudulent character, with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed * * *"

21 The Government argues that the words "department or agency," as used in Section 1017, should not be limited to the executive branches of the Government because, if this were the case, it would be a crime to fraudulently or wrongfully impress or affix the seal of the executive branches of the Government while, at the same time, the seals of the legislative and judicial branches of the Government could be used with impunity. In the reviser's notes to Section 1017, the following appears:

"To clarify scope of section and in view of definition of department or agency in section 6 of this title, words 'department or agency' were substituted for 'executive department, or of any bureau, commission, or office'."

It would thus appear that this Section 1017 has reference to the executive departments or agencies as those words are defined by Section 6.

As a matter of fact, the Government's argument regarding crimes involving seals may be transformed into an argument for the defendant. It will be noted that Section 505, Title 18, which relates to seals of courts and reads as follows:

"Whoever forges the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or forges or counterfeits the seal of any such court, or knowingly concurs in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or tenders in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

is similar to Section 506, Title 18, which has to do with the forging or counterfeiting of seals of "departments or agencies" of the United States and reads as follows:

"Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or

"Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or

"Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered—

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

If the Congress had intended the phrase "department or agency," in Section 506, to have been all-inclusive because of
22 the use of these words, there would have been no necessity for the enactment of Section 505, where the penalties are precisely the same. See also reviser's notes to Section 506, where it is stated:

"Provision for 10 years' imprisonment was reduced to 5 years to conform to punishment provision in section 505 of this title, covering an offense of like gravity."

The Government similarly argues that if Section 1001 were intended to include the executive branches only, then false statements could be made to the legislative and judicial branches of the Government with impunity. This is not the case, since the perjury statutes of the United States Code make it a crime to make false statements to the legislative and judicial branches of the Government.

The United States Attorney has presented to the Court a number of instances where Courts have applied the word "department" to the legislative and judicial branches of the Government and, in

so doing, have referred not only to the legislative branch as a "department" but have also referred to the executive and judicial branches as "departments." For instance, as far back as *Foster* v. *Neilson*, 2 Peters 253 (1829), Chief Justice Marshall uses the language (p. 314): "* * * the treaty addresses itself to the political, not the judicial department; * * *" See also *Mississippi* v. *Johnson*, 4 Wall. 475 (1867), where Chase, C. J., says (p. 500):

"The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department; * * *"

The United States Attorney also calls attention to the fact that in the recent edition of the United States Constitution, Annotated, the three cooordinate branches of the Government are referred to as "departments."

There could be no quarrel with these arguments but the short answer is that, in the opinion of the Court, Section 1001 of Title 18 uses the word "department" in a limited sense, as shown by Section 6 of that Title, all as above referred to. Further than this, while it is true that each of the three branches of the Government may be referred to at times as "departments" of the Government, there would seem to be no justification for using the word "department," as referred to in Section 1001, as referring to each of the three coordinate branches of the Government because Section 6, in its definition, refers to the "executive departments," such as

The Department of State, etc. (See page 7 of this opinion.)

23 Counsel for the Government has conceded in open court that if the Court has a reasonable doubt as to the applicability of a criminal statute in a hearing upon a motion in arrest of judgment (although he insists that the instant case is one where there is no reasonable doubt), then that doubt should be resolved against the Government and in favor of the defendant, thereby placing the burden of appeal upon the Government. This is particularly so in this case since counsel for both sides have stated that it will ultimately reach the Supreme Court. For the reasons expressed in this opinion, the Court has a reasonable doubt as to the applicability of Section 1001 to the legislative and judicial branches of the Government. I resolve this reasonable doubt in favor of the defendant.

The defendant's motion in arrest of judgment is granted, based on the Court's construction of the statute involved.

The Government is able to appeal this case directly to the United States Supreme Court under authority of Title 18, United States Code, Section 3731, since this decision is based upon the construction of Section 1001, Title 18, upon which the indictment in this case was founded.

Counsel will prepare and submit on notice the appropriate order.

Walter M. Bastian,
WALTER M. BASTIAN,
United States District Judge.

24 In the United States District Court
[Title omitted.]
[File endorsement omitted.]

Order Granting Motion in Arrest of Judgment, etc.

Filed April 14, 1954

This cause came on to be heard this term of court upon defendant Bramblett's Motion in Arrest of Judgment, for Acquittal, and for a New Trial, and in consideration of the motions filed herein, and the supporting memoranda filed by each side, and oral argument in open court, it is by the Court this 14th day of April 1954.

Ordered that the Motion in Arrest of Judgment be, and the same is hereby, granted;

That the Motion for Acquittal be, and the same is hereby, denied;

That the Motion for a New Trial be, and the same is hereby, denied.

Walter M. Bastain,
WALTER M. BASTIAN,
Judge.

Seen: WILLIAM HITZ,
Assistant United States Attorney.

25 In the United States District Court
[Title omitted.]
[File endorsement omitted.]

Notice of appeal

Filed May 13, 1954

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Columbia, entered April 14, 1954, arresting the judgment of conviction in the above-entitled case.

Simon E. Sobeloff,
SIMON E. SOBELOFF,
Solicitor General,
Department of Justice, Washington, D. C.

Dated May 13, 1954.

26-45 *Statement directing attention to provisions of Rule 12, paragraph 2 (omitted in printing)*

46 *Designation of record on appeal (omitted in printing)*

47 In United States District Court
[Title omitted.]

Docket entries

Date 1953	*Proceedings*
June 17	Presentment and indictment filed (18 counts).
18	Arraigned, plea not guilty entered. Defendant committed to District of Columbia Jail. Commitment issued. Defendant granted until July 27, 1953, within which to file appropriate motions. Bond fixed by Court in the sum of $2,500.00. Attorney Edward B. Williams present, appearance entered, filed. Laws, C. J. (Reporter-Doran). Cert. filed.
July 27	Motion of defendant to dismiss indictment, filed. Cert of Serv. Memorandum of Points and Authorities in support of Motion to dismiss indictment filed. Affidavit of Edward Bennett Williams, Esq., filed.
Sept. 21	Motion of defendant to inspect pertinent parts of Grand Jury Minutes and Affidavit, filed. Cert. of Serv.
Sept. 25	Opposition of United States to motion to dismiss indictment, Affidavit of Edward Forgin Bliss in support thereof, filed. Cert. of Serv.
Oct. 2	Motion to dismiss indictment heard, argued and continued to Oct. 6, 1953, at 10:00 a. m. Attorney Edward B. Williams present. Letts, J. (Reporter-Deeds).
48 Oct. 2	Government's Opposition to motion to inspect pertinent parts of Grand Jury Minutes and Affidavit in support thereof, filed. Cert. of Serv. Government's motion to quash subpoena and Memorandum of Points and Authorities in support thereof, filed. Cert. of Serv.
Oct. 6	Motion to dismiss indictment argued and submitted. Attorney Edward B. Williams present. Letts, J. (Reporter-Thiel).
Oct. 13	Informal Memorandum denying defendant's motion to dismiss the indictment, filed. Letts, J. (Reporter-Thiel).

Date		*Proceedings*
1953		
Oct.	23	Motion to inspect pertinent parts of Grand Jury minutes heard, argued, and denied: Attorney E. B. Williams present. Letts, J. (Reporter-Thiel). Cert. filed.
Oct.	23	Government's motion to quash subpoena heard, argued, and granted. Motion to dismiss indictment (on remaining grounds) heard, argued, and denied. Attorney E. B. Williams present. Letts, J. (Reporter-Thiel). Cert. filed.
1954		
Feb.	2	Jurors sworn on voir dire; jury sworn: Warren T. Polk, Albert Barton, Vindell E. Munsey, Emanuel Danforth, Lillian M. Nicholson, Nellie B. Edelen, Barbara E. Lowell, Elizabeth L. Frazee, Harriet E. Furbush, Audrey S. Kirkland, Doris M. Greene, Eloyce N. Hackett. Two alternate Jurors sworn: A. 1. James F. Quidley, A. 2. Francis S. Rose. Case respited until tomorrow morning. Deft. on bond; Attorney Edward B. Williams present. Bastian, J. (Reporter-Harrison). Cert. filed.
Feb.	3	Trial resumed; same jury: Case respited until tomorrow morning. Attorneys Edward B. Williams and Murdaugh S. Madden present. Deft. on bond. Bastian, J. (Reporter-Harrison). Cert. filed.
Feb.	4	Trial resumed; same jury: Case is respited until tomorrow morning at 11:30 a. m. Attorneys Edward B. Williams and Murdaugh S. Madden present. Bastian, J. (Reporter-Harrison). Cert. filed.
49 Feb.	8	Trial resumed; same jury: Case respited until tomorrow morning. Attorneys Edward B. Williams and Murdaugh S. Madden present. Bastian, J. (Reporter-Harrison). Cert. filed.
Feb.	9	Trial resumed; same jury: Government's and Defendant's Prayers, filed. Defendant's Oral motion for a judgment of acquittal on all counts of the indictment granted as to Counts 8 to 18, inclusive, and denied as to Counts 1 to 7, inclusive. Judgment of Acquittal entered as to Counts 8 to 18 inclusive; trial proceeds on Counts 1 to 7, inclusive; Verdict: Guilty on Counts 1 to 7 as indicted. Jury Polled; Defendant permitted to remain on bond pending sentence; Case is referred to the Probation Officer of the Court; Attorneys Edward B. Williams and Murdaugh S. Madden present. Bastian, J. (Reporter-Harrison). Cert. filed.

Date 1954	Proceedings
Feb. 9	Transcript of proceedings, Oct. 2, 1953, pages 1–21, filed. (Clerk's Copy) (Reporter-Deeds).
Feb. 9	Transcript of proceedings (Testimony of Edward G. Bliss and Ernest K. Bramblett, on motion to dismiss Indictment), Tuesday, Oct. 5, 1953, pages 1–17, filed. (File Copy) (Reporter-Thiel).
Feb. 15	Motion of defendant in arrest of Judgment, for Acquittal and for a new trial, filed. Cert. of Serv.
Feb. 19	Transcript of proceedings, vol. i, Feb. 2, 1954, pages 1–94; vol. II, Feb. 3, 1954, pages 95–250; vol. 2–A, Feb. 4, 1954, pages 250–A to 250–F; vol. III, Feb. 4, 1954, pages 251–439; vol. IV, Feb. 5, 1954, pages 440–445; vol. V, Feb. 8, 1954, pages 446–577; vol. VI, Feb. 9, 1954, pages 578–712, filed. (File copy) (Reporter-Harrison).
Mar. 11	Motion in arrest of judgment for acquittal and for a new trial argued and submitted: Attorney Edward B. Williams present. Bastian, J. (Reporter-Harrison). Cert. filed.
50 Apr. 6	Defendant's reply memorandum of Points and Authorities in support of Motion in Arrest of Judgment, filed Cert. of Serv.
Apr. 13	Government's memorandum of Points and Authorities in opposition to Motion in Arrest of Judgment, filed. Cert. of Serv.
Apr. 14	Motion of deft. for acquittal and motion of deft. for a new trial, denied; Motion of deft. for arrest of judgment, granted, pending appeal; Opinion in re: motions of the defendant for arrest of judgment, judgment of acquittal, and for a new trial, filed. Order granting motion of defendant for Arrest of judgment, and denying motions of defendant for judgment of acquittal and for a new trial, filed. Bastian, J.
Apr. 14	Personal Appearance Bond in the sum of $100.00 taken, filed.
May 13	Notice of appeal to the Supreme Court of the United States, Statement as to Jurisdiction with a copy of the Opinion of Judge Walter M. Bastian, U. S. District Court Judge attached, filed. (Filed by U. S., Simon E. Sobeloff, Solicitor General, Dept. of Justice). Proof of Service of Jurisdictional Statement upon Defendant filed by the United States and Designation of Record on Appeal, filed. Cert. of Serv.

Date 19—)	Proceedings
May 18	Receipt from Harold B. Willey, Clerk, Supreme Court of the United States, for duplicate copies of Notice of Appeal, Statement as to Jurisdiction and Docket Entries, filed.
May 27	Motion to affirm, filed. Cert. of Serv.

51 In United States District Court

Excerpts from transcript of testimony

Q. I see, or be a retroactive pay increase, too?

A. Yes, under those statutes, that is my recollection that that was authorized.

Q. Now, Mr. Megill, is the Sergeant-at-Arms of the House an office independent of that of the Clerk of the House?

A. He is an elected officer of the House just like the Speaker and the Clerk and other officers.

Q. Who elects the Clerk of the House?

A. The House of Representatives elects the Clerk of the House.

Q. Who pays the Members of the House of Representatives?

A. The Sergeant-at-Arms at the House of Representatives pays the Members' salaries.

Q. Does he also take care of the transportation and other fees due the Members as a Member?

A. He pays the mileage allowance to Members as well.

Q. And you, among other things, take care of his clerk-hire, is that correct?

A. Yes; the Clerk of the House takes care of the payment of the clerk-hire allowance and the payment of all the salaries and expenses of the officers and the employees of the House.

Q. What relationship does the disbursing officer bear to the Clerk of the House?

A. Do you mean the disbursing clerk?

52 Q. All right, what is his real name?

A. The disbursing officer of the House actually is the Clerk of the House. The Clerk's agent is the disbursing clerk. He is in charge of the disbursing office.

Q. And what relation does he bear to the Clerk of the House?

A. He is an employee appointed by the Clerk of the House of Representatives to assist the Clerk in the carrying out of his fiscal duties.

Q. Is he subordinate in an administrative way?

A. He is completely subordinate to the Clerk of the House, subject to his orders.

Q. What is the disbursing office that is noted at the top of the clerk-hire form?

A. The disbursing office is the particular section of the Clerk's office that carries out the fiscal duties of the Clerk, and the disbursing clerk has charge of that office under the Clerk's direction.

Q. Would it be proper to say that the disbursing——

Mr. WILLIAMS. I think you should not lead the witness, Mr. Hitz.

Mr. HITZ. I agree.

The COURT. Is that a tremendous——

Mr. WILLIAMS. I will withdraw it, Your Honor.

By Mr. HITZ.

53 Q. Does the Clerk of the House, acting in the function of disbursing officer for the House, have to file a bond, a surety bond within any organization?

A. He does.

Q. With whom?

A. He files that with the Treasurer of the United States, as required by law.

Q. In what amount at this time?

A. In the amount of $20,000.

Q. Are any records kept by the Clerk of the House, acting in his disbursing office function which are submitted to any other Government organizations?

A. As a disbursing officer of the Government, he submits his account current to the General Accounting Office, and for information under a recent budget law he sends a copy of that to the Treasurer of the United States.

Q. When does he do that?

A. At the end of each quarter of each fiscal year.

Q. Does the General Accounting Office audit the accounts of the Clerk, acting as disbursing officer?

A. The General Accounting Office audits the account of the Clerk as such disbursing office.

Q. Mr. Megill, upon whom does the Clerk of the House, acting as disbursing officer of the House, draw the checks for clerk-hire?

54 A. He draws that against the Treasurer of the United States.

Q. The Treasurer of the United States?

A. The Treasurer of the United States.

Q. Who furnishes the disbursing officer of the House with the actual piece of paper upon which becomes the pay check?

A. The Treasury Department supplies it. I think they are printed in the Bureau of Engraving.

Q. Is it supplied to the disbursing office all stamped up with the name of the Treasurer of the United States on it?

A. It is.

Q. And is there a seal on it?

A. Yes.

Q. Is there an address of Washington, D. C., on it when it is received?

A. I can't answer that, I don't know.

The COURT. What was that?

The WITNESS. I can't answer that, I don't know whether it does have Washington, D. C., on it or not. I don't recall.

Mr. HITZ. Will you mark this for identification?

The DEPUTY CLERK. Government's Exhibit No. 16 for identification.

55 [Clerk's certificate to foregoing transcript omitted in printing.]

56 In the Supreme Court of the United States

October Term, 1954

[Title omitted.]

Statement of points to be relied upon and designation of record

Filed October 29, 1954

Pursuant to former Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the term "department or agency" as used in 18 U. S. C. 1001 does not include the Disbursing Office of the House of Representatives.

2. The District Court erred in arresting the judgment of conviction.

Appellant deems the entire record certified to this Court, except the statement of jurisdiction, necessary for the consideration of the points relied upon.

Simon E. Sobeloff,
SIMON E. SOBELOFF,
Solicitor General.

OCTOBER 28, 1954.

57 *Certificate of service (omitted in printing)*

59 [File endorsement omitted.]

60 Supreme Court of the United States

No. 159, October Term, 1954

[Title omitted.]

Appeal from the United States District Court for the District of Columbia.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Order noting probable jurisdiction.

October 18, 1954

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

The Chief Justice took no part in the consideration or decision of this question.

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

vs.

ERNEST KING BRAMBLETT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal Action No. 971-53

UNITED STATES OF AMERICA, APPELLANT

vs.

ERNEST KING BRAMBLETT

STATEMENT AS TO JURISDICTION

Filed May 13, 1954, Harry M. Hull, Clerk

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause arresting judgment of conviction.

OPINION BELOW

The opinion of the District Court arresting judgment of conviction has not yet been reported. A copy is annexed hereto.

JURISDICTION

The order of the District Court arresting judgment of conviction was entered April 14, 1954. The jurisdiction of the Supreme Court to review on direct appeal the decision arresting judgment of conviction for insufficiency of the indictment based on a construction of the statute upon which it is founded is conferred by 18 U. S. C. 3731. See also Rule 37(a), F. R. Crim. P.

QUESTION PRESENTED

Is the Disbursing Office of the House of Representatives a "department or agency" within the meaning of 18 U. S. C. 1001, which forbids the wilful falsification by a scheme of a material fact within the jurisdiction of any department or agency of the United States.

STATUTE INVOLVED

18 U. S. C. 1001, 62 Stat. 749, provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On November 10, 1953 an indictment in eighteen counts charging violations of 18 U. S. C. 1001 was returned against defendant in the United States District Court for the District of Columbia. Each count charged that defendant, in a matter within the jurisdiction of a department and agency of the United States, namely the Disbursing Office of the House of Representatives, wilfully falsified by a scheme a material fact. The scheme alleged was that defendant, while a member of the House of Representatives, presented to the Disbursing Office of the House a Clerk-Hire Allowance form in which he represented that a person named therein was his clerk and that he thereafter allowed the Disbursing Office to issue salary checks to such person at the close of each pay period, whereas the person so designated to whom the salary checks were made payable was not in fact a clerk to defendant, as defendant well knew. By this means defendant was able to convert to his own use the compensation paid to such clerk.

At the close of the Government's case the trial court granted defendant's motion for acquittal as to counts eight through eighteen, inclusive, and denied it as to counts one through seven, inclusive. The court submitted these seven counts to the jury, which returned a verdict of guilty. Defendant filed a motion in arrest of judgment and, in the alternative, for a judgment of acquittal and, in the alternative, for a new trial. The court denied defend-

ant's motions for acquittal and, in the alternative, for a new trial, but granted his motion in arrest of judgment on the basis that 18 U. S. C. 1001 as construed by the court does not apply to a matter within the jurisdiction of the Disbursing Office of the House of Representatives.

THE QUESTION IS SUBSTANTIAL

In holding that 18 U. S. C. 1001 does not apply to matters within the jurisdiction of the Disbursing Office of the House of Representatives, the decision below unduly narrows the scope of this section and adversely affects the administration of justice. By limiting the words "department or agency" as used in section 1001 to mean only those executive departments enumerated in section 1 of Title 5, U. S. C., the District Court deprives the federal treasury of the protection of section 1001 against deceits perpetrated in the judicial and legislative branches of the Government. The District Court in its opinion acknowledged that it had a reasonable doubt as to the scope of this section. The question whether the District Court erred in its construction is therefore clearly substantial.

The gist of the court's opinion is that the words "department or agency" as used in section 1001, when considered in the light of 18 U. S. C. 6, limit the application of the statute to executive branches of the Government. It is the Government's position that "department or agency" cannot, by the very definition of section 6 itself, be limited to only those agencies which are "executive" in the sense

that "executive" is used in determining questions of separation of powers, and that the Disbursing Office of the House of Representatives, which expends and accounts for moneys of the United States, is a department or agency of the United States within the definition of 18 U. S. C. 6 and *a fortiori* is within the purview of section 1001.

Section 6 provides:

> As used in this title:
>
> The term "department" means one of the executive departments enumerated in section 1 of title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.[1]
>
> The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

---

[1] The executive departments enumerated in section 1 of Title 5, as amended, include:

The Department of State
The Department of Defense
The Department of the Treasury
The Department of Justice
The Post Office Department
The Department of the Interior
The Department of Agriculture
The Department of Commerce
The Department of Labor
The Department of Health, Education and Welfare.

1. Assuming that the term "department" is limited to the executive branch of the Government, it is clear that the term "agency," which includes departments in its definition, must mean something more than the executive branch. The term "agency," which is defined as an "independent" establishment, commission, administration, authority, board or bureau of the United States," in addition to "any department," clearly includes those subordinate organizations which are created to assist the legislative and judicial branches of government. The definition of section 6 shows that agency was understood to have wide sweep since, in contrast to the definition of department which has the qualification that the context may show wider meaning, the definition of agency contains the qualifying phrase, "unless the context shows that such term was intended to be used in a more *limited* sense." (Underscoring supplied.)

Manifestly the term "agency" cannot be limited to those agencies which exercise only executive power. The word "commission" clearly embraces the Federal Trade Commission, which has been held to be a legislative agency. *Humphrey's Executor* v. *United States*, 295 U. S. 602. In *Romney* v. *United States*, 167 F. 8d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, the Sergeant-at-Arms of the House of Representatives was convicted of presenting to the General Accounting Office false statements of accounts, and of concealing by trick, scheme and device in a matter within the jurisdiction of a "department or agency" under the prede-

cessor of present section 1001, then 18 U. S. C. (1946 ed.) 80. Yet the General Accounting Office, like the Distributing Office of the House of Representatives, is a part of the legislative branch of the Government.

The principal officer of the Disbursing Office of the House of Representatives administers funds of the United States under a bond filed with and subject to approval by the Department of the Treasury. See 2 U. S. C. 75.[2] No good reason appears why the term "authority" as used in the definition of "agency" in section 6 should not include such office. It is the Government's position that the Disbursing Office, whose duties relate to expenditure of moneys of the United States, is an agency of the United States within the literal terms of section 6.

2. Actually, there is no reason to read the word "department" in section 1001 as narrowly as did the court below. The definition states that the term department means those enumerated in section 1 of Title 5 "unless the context shows that such term was intended to describe the executive, legislative or judicial branches of the government." Thus the framers of the 1948 revision, in writing a general section, showed awareness that the definition might unduly limit some of the many sections of the Code in which the term appears. Context we understand

[2] The functions of the Disburing Office are a matter of which the Court can take judicial notice. Since, however, they were made the subject of testimony at the trial, we have, for the convenience of the Court, included in the record the portion of the testimony describing the operations of that office.

to be, not only language, but purpose and legislative history of the statute. These support the view that section 1001 relates to the Disbursing Officers of Congress.

The legislative history of section 1001 leaves no doubt that the phrase "department or agency" as used therein was intended and understood to include such legislative offices as the Disbursing Office of the House of Representatives. Though section 1001 acquired its present form in 1948 when the general revision of the Federal Criminal Code was enacted (Act of June 25, 1948, c. 645, 62 Stat. 749), it had its genesis in the Act of March 2, 1863, 12 Stat. 696, which later became section 5438 of the Revised Statutes under the codification of December 1, 1873. This precursor statute made it a crime for anyone to present a false claim—

> to . . . any person or officer in the civil or military service of the United States . . .

The court in *United States* v. *Strobach*, 48 Fed. 902, 908 (C. C. D. Ala. 1883), held that a United States District Court Judge was an officer in the "civil" service of the United States within the meaning of this statute. The same statute provided also that the false claim must be—

> . . . upon or against the Government of the United States, or *any department* or officer thereof . . . (Emphasis added.)

indicating that the term "department" as used therein was to be accorded the broadest possible scope.

By the Act of October 23, 1918, 40 Stat. 1015, Congress amended this false claim statute (which was then known as section 35 of the Criminal Code following the 1909 revision, 35 Stat. 1088, 1095) by adding several phrases to the scope clause to make it read—

> to . . . any officer in the civil, military or naval service of the United States, *or any department* thereof or any corporation in which the United States of America is a stockholder . . . (Emphasis added.)

From 1863 until 1918, the second half of the false claim statute, relative to cheating, swindling, and defrauding the Government of the United States by false documents remained substantially unchanged. Its scope was identical with that of the first half. By the Act of October 23, 1918, 40 Stat. 1015, the second half was amended to include the phrase—

> . . . shall knowingly and wilfully falsify or conceal or cover up by any trick, scheme, or device a material fact, . . .

This addition undoubtedly establishes the close kinship between present section 1001 and its precursor, the false claim statute.

By the Act of June 18, 1934 (48 Stat. 996), Congress amended the second half of the false claim statute by inserting the phrase—

> . . . in any matter within the jurisdiction of any department or agency of the United States . . .

which is in dispute in this case. The new language added in 1934 served only to make the description of false statements as broad as and coextensive with the qualifications attached to false claims as described in the first half. Thus, in 1934, it is manifest that Congress revealed its intent to conjoin false claims and false statements which redound to the detriment of the Government of the United States and to give to both the same broad scope and equal applicability.

When the Federal criminal laws were revised and codified and Title 18 was enacted into positive law, Act of June 25, 1948, c. 645, 62 Stat. 865, the false claim statute (section 35A of the Criminal Code) was divided into two parts. The first half, dealing with false claims, is now section 287; the second half, dealing with false statements, is section 1001. Though much of the language common to both halves of the original statute has been lost in the revision, that which remains is traceable directly to the original and clearly indicates that both are coextensive in prohibition and remain interrelated in their purpose to protect the operations of all agencies of the Government and to prevent forays on the federal treasury.

In the light of the clear wording of section 1001 standing alone, and reinforced with the indisputable intent of Congress as to its breadth and scope, it is clear that the Disbursing Office of the House of Representatives is a "department or agency" within its intendment.

It is submitted, therefore, that the decision of the District Court is erroneous and that the question presented by this appeal is substantial and should be settled by the Supreme Court.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 971-53

UNITED STATES OF AMERICA

v.

ERNEST KING BRAMBLET

Filed April 14, 1954. Harry M. Hull, Clerk.

OPINION

This case is before the Court on defendant's motion in arrest of judgment (Rule 34, Federal Rules of Criminal Procedure) or, in the alternative for a judgment of acquittal (Rule 29, F.R.Cr.P.) or, in the alternative, for a new trial (Rule 33, F.R. Cr.P.)

The defendant in this case was charged in an eighteen-count indictment with violations of Title 18, Section 1001, United States Code, and was convicted by a jury on Counts One through Seven. On oral motion of the defendant during the course of the trial, the Court ordered that a judgment of acquittal be entered on Counts Eight through Eighteen, inclusive. Title 18, Section 1001, U.S.C., reads as follows:

> "Whoever, *in any matter within the jurisdiction of any department or agency of the United States* knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false,

> fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749." (Emphasis supplied.)

The indictment charges in Counts One through Seven that the defendant did, on or about August 27, 1949, present to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated August 27, 1949, and did thereby knowingly and willfully falsify, by a scheme, a material fact; that the material fact allegedly falsified by the scheme was the representation by that designation that Margaret M. Swanson was a clerk (and entitled to receive compensation) to the defendant in the discharge of his official and representative duties as a member of Congress, from the 11th District, State of California, the true fact being that the said Margaret M. Swanson was not such a clerk, as the defendant well knew. The first seven counts allege that the defendant did, beginning on June 30, 1950, and for each succeeding month thereafter through December 20, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, knowingly and willfully falsify by a scheme a material fact, by knowingly and willfully continuing in full force and effect the desig-

nation contained in the said Clerk-Hire Allowance form as aforementioned.

The defendant's motions for acquittal or, in the alternative, for a new trial, are denied.

The defendant's principal contention in connection with his motion in arrest of judgment, and the only one in which the Court finds any merit, is that the indictment fails to state an offense against the United States, in that the indictment fails to charge the defendant with falsifying any fact "within the jurisdiction of a department or agency of the United States." The defendant contends that the Disbursing Office of the House of Representatives, to which the false statement was allegedly made, being an office of the legislative branch of the Government, does not fall within the definition of "any department or agency of the United States." His contention is that it was the intent of Congress to limit the words "department or agency," when used in a section within Title 18, to include only the executive branch of the Government unless the context of the statute specifically included within its scope the legislative or judicial branches of the Government.

The defendant in support of his contention urges that, when there is doubt and uncertainty concerning the scope or construction of a criminal statute, that doubt must be resolved in favor of the defendant. In other words, the defendant contends that criminal statutes should be strictly construed. The Government takes the position that, in those cases wherein that principle is expounded, the language

of the statute under inquiry is ambiguous and that the rule as to strict construction does not require that the statute be given the narrowest possible meaning nor that the congressional intent be disregarded.

The Government urges that Title 18, Section 1001, *supra*, is not ambiguous, and that the legislative history of the Act justifies the conclusion that Congress did not intend the statute to be limited to the executive branches of the Government only.

Title 18, United States Code, Section 1001, *supra*, originated as the Act of March 2, 1863, 12 Stat. 696, and later became Section 5438 of the Revised Statutes[3] under the codification of December 1, 1873, approved June 22, 1874. An amendment of May 30, 1908, 35 Stat. 555, changed the penalties for the offenses. The Act of March 4, 1909, 35 Stat. 1088, 1095, was "An Act to codify, revise and amend the penal laws of the United States." Former Section 5438 of the Revised Statutes received the section number 35, "Presenting false claims." Section 35 read in part as follows:

> "Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, *to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof*, knowing such claim to be false, fictitious, or fraudulent; or

[3] R.S., p. 1054, 1873-1874; 2nd Ed. 1878.

whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry . . . shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. . . ." (Emphasis supplied.)

Congress then passed the amendment of October 23, 1918, 40 Stat. 1015, since unsuccessful attempts had been made under Section 35 to punish persons committing frauds against some of the corporations created by Congress during World War I in which the Government owned all or part of the stock. The amended section added, among other things, the words "any corporation in which the United States of America is a stockholder." The pertinent part of Section 35 then read as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim

to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the *intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder*, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both. . . ." (Emphasis supplied.)

Up to this point, it will be noted that Section 35 provided that whoever "shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States or any department or officer thereof, or any corporation in which the United States of America is a stockholder" should

be punished as provided, and also provided punishment for false statements or representations made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder."

As the later amendments are referred to, it will be noted that the broad language just mentioned as to false statements has been seriously limited, and the language in Title 18, United States Code, Section 1001, is now: "in any matter within the jurisdiction of any department or agency of the United States," language substantially different from: "Government of the United States, or any department or officer thereof."

On June 18, 1934, Title 18, Section 35, was amended (48 Stat. 996) so as to read:

> "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or con-

> ceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, *in any matter within the jurisdiction of any department or agency of the United States* or of any corporation in which the United States of America is a stockholder . . . shall be fined not more than $10,000 or imprisoned not more than ten years, or both. . . ." (Emphasis supplied.)

This amendment eliminated the words "cheating and swindling or defrauding" and embraced false and fraudulent statements or representations where these were knowingly and willfully used in documents or affidavits "in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder," there being no restriction to cases involving pecuniary or property loss to the Government. See *United States v. Gilliland, et al.*, 312 U.S. 86. In that case, the Court was concerned with the effect of the 1934 amendment to Section 35, but did not decide the scope of the words "department or agency" since the false and fraudulent statements charged there related "to a matter within the jurisdiction of the

Department of the Interior, the Secretary of the Interior, and the Federal Tender Board No. 1, Kilgore, Texas." (P. 90.)

Prior to the 1934 amendment, the Secretary of the Interior sought legislation to aid the enforcement of laws relating to the functions of the Department of the Interior and, in particular, to the enforcement of regulations under Section 9c of the National Industrial Recovery Act of 1933 with respect to the transportation of "hot oil." The Secretary's effort was due, as he stated, to the lack of a law under which prosecutoin might be had "for the presentation of false statements."

The bill which was passed by Congress, however, was amended in its final stages so as to require "intent to defraud the United States." This bill was returned by the President without his approval, for the reason that the offense as defined was covered by existing law, which provided for more severe punishment than that proposed by the bill.

Another measure was then proposed by the Secretary of the Interior which would obviate these objections and accomplish the purpose of including the presentation of false statements in relation to "hot oil." The bill was then passed and approved and included, with other amendments of Section 35, the 1934 amendment above referred to, omitting and eliminating words which had been deemed to make the former provision applicable only to cases where pecuniary or property loss to the Govern-

ment had been caused. See *United States v. Cohn*, 270 U.S. 339, 346.

Section 35 was again amended April 4, 1938 (52 Stat. 197) but that amendment merely divided Section 35 into Subsections (A), (B) and (C), and separated them into paragraphs. (18 U.S.C.A., Sec. 80, et seq.)

The Act of June 25, 1948 (62 Stat. 683), revising the Criminal Code, divided Section 80 U.S.C.A. into two sections. The provisions against making false claims were set out in Title 18, U.S.C. 287; and the provisions against making false statements, with which we are here concerned, were set out in Section 1001 of that Title, *supra*.

The Government argues that it was the intent and purpose of Congress, throughout the legislative history, to include all branches of the Government and that the language of Section 1001 is plain and completely comprehensive, and that this apparent intention should not be frustrated by construction.

The Government cites *Spivey v. United States*, 109 F. (2nd) 181 (5th Circuit, 1940); 310 U. S. 631, cert. denied, wherein Section 80, formerly Section 35 (the forerunner sections of Section 1001) was under consideration. The Court there said:

> "The force and effect of statutes of this kind, designed to prevent frauds upon the Government may not be frittered away by a mere literal construction." (p. 184.)

That Court went on to say:

> "While Criminal Statutes, may not by process of construction, be extended beyond their reasonable and natural meaning, neither may they be, by the same process, deprived of their natural meaning." (p. 185.)

The Court there, however, was not concerned with the scope of the words "department or agency" since that case involved the making of false and fictitious statements to the Commodity Credit Corporation, a corporation in which "the United States has a proprietary interest."

It seems significant to the Court that Title 18, Section 287 (formerly the first part of old Section 35) provides penalties against anyone who "makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim . . . knowing such claim to be false." This language is all-inclusive and has remained substantially the same. See 1934 Act, *supra*, and Section 287.

Section 1001 provides penalties for making false statements "in any matter within the jurisdiction of any department or agency of the United States." This language is not all-inclusive and has not remained the same. The change in the language to that of Section 1001 by the 1934 Act, together with the definition in Section 6 of Title 18, *infra*, seems to the Court most illuminating and, when taken into consideration in connection with the reviser's notes hereinafter referred to, conclusive.

Both the Government and the defendant agree that this is a case of first impression with regard to the scope of the words "department or agency" as found in Section 1001. No case, either *nisi prius* or appellate, in which an attempt has been made to apply Section 1001 to either the legislative or judicial branches of the Government, has been called to the attention of the Court.

When Congress, in 1948, passed the Act to revise, codify, and enact into positive law Title 18 of the United States Code, entitled "Crimes and Criminal Procedure," it set out words in Title 18, Section 6, which define "department" and "agency" as follows:

> "The term 'department' means one of the executive departments enumerated in section 1 of Title 5, *unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.*
>
> "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, *unless the context shows that such term was intended to be used in a more limited sense.*"
>
> (Emphasis supplied.)

Going to Section 1 of Title 5 (referred to in the first paragraph of Section 6, Title 18), we find that

the departments enumerated in said Section 1 are as follows:

The Department of State
The Department of Defense
The Department of the Treasury
The Department of Justice
The Post Office Department
The Department of the Interior
The Department of Agriculture
The Department of Commerce
The Department of Labor

To these has been added, by amendment, The Department of Health, Education and Welfare. (1953 Reorganization Plan No. 1, 18 F. R. 2053, 67 Stat. 631.)

It seems apparent to the Court, from a reading of these definitive sections (Section 6 of Title 18 and Section 1 of Title 5), that Congress intended to limit the words "department or agency" to the executive branches of the Government unless the context shows that such term was intended to include the legislative or judicial branches of the Government.

Significant also are the reviser's notes to Section 6, Title 18, reading as follows:

> "This section defines the terms 'department' and 'agency' of the United States. The word 'department' appears 57 times in Title 18, U. S. C. 1940 ed., and the word 'agency' 14 times. It was considered necessary to define clearly

these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See United States v. Germaine, 1878, 99 U. S. 508, 25 L. Ed. 482, for definition of words 'department' or 'head of department.')

"The phrase 'corporation in which the United States has a proprietary interest' is intended to include those governmental corporations in which stock is not actually issued, as well as those in which stock is owned by the United States. It excludes those corporations in which the interest of the Government is custodial or incidental. 80th Congress House Report No. 304."

In many instances wherein the words "department or agency" appear within a section of Title 18, the reviser makes reference to the definitive Section 6 of said Title.

Among sections in Title 18, where the context shows that the term "department or agency" was intended to describe branches of the Government other than the executive, are the following:

Section 201:

"Whoever promises, offers, or gives any money or thing of value . . . for the payment of money or for the delivery or conveyance of anything of value, to any officer or employee or person *acting for or on behalf of the United States, or any department or agency thereof*,

in any official function, *under or by authority of any such department or agency or to give any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof. . . .*" (Emphasis supplied.)

Section 283:

"Whoever, *being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives*, acts as an agent or attorney for prosecuting any claim against the United States. . . . (Emphasis supplied.)

Section 602:

"Whoever, *being a Senator or Representative*, in, or Delegate *or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof*, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States. . . ." (Emphasis supplied.)

Section 1505:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede

any witness in any proceeding pending before *any department or agency of the United States*, or in connection with any inquiry or investigation being had by *either House, or any committee of either House, or any joint committee of the Congress*. . . ." (Emphasis supplied.)

The Government has cited to the Court Title 18, U. S. C., Section 1017, wherein the words "department or agency" appear, but there is no specific reference to the other coordinate branches of the Government. Section 1017 reads as follows:

> "Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate, instrument, commission, document, or paper, or with knowledge of its fraudulent character, with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed. . . ."

The Government argues that the words "department or agency", as used in Section 1017, should not be limited to the executive branches of the Government because, if this were the case, it would be a crime to fraudulently or wrongfully impress or affix the seal of the executive branches of the Government while, at the same time, the seals of the legislative and judicial branches of the Government

could be used with impunity. In the reviser's notes to Section 1017, the following appears:

> "To clarify scope of section and in view of definition of department or agency in section 6 of this title, words 'department or agency' to be substituted for 'executive department, or of any bureau, commission, or office'."

It would thus appear that this Section 1017 has reference to the executive departments or agencies as those words are defined by Section 6.

As a matter of fact, the Government's argument regarding crimes involving seals may be transformed into an argument for the defendant. It will be noted that Section 505, Title 18, which relates to seals of courts and reads as follows:

> "Whoever forges the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or forges or counterfeits the seal of any such court, or knowingly concurs in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or tenders in evidence any such proceeding or document with a false or counterfeit signature of any judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

is similar to Section 506, Title 18, which has to do with the forging or counterfeiting of seals of "departments or agencies" of the United States and reads as follows:

> "Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or
>
> "Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or
>
> "Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered—
>
> "Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

If the Congress had intended the phrase "department or agency", in Section 506, to have been all-inclusive because of the use of these words, there would have been no necessity for the enactment of Section 505, where the penalties are precisely the same. See also reviser's notes to Section 506, where it is stated:

> "Provision for 10 years' imprisonment was reduced to 5 years to conform to punishment provision in section 505 of this title, covering an offense of like gravity."

The Government similarly argues that if Section 1001 were intended to include the executive branches only, then false statements could be made to the legislative and judicial branches of the Government with impunity. This is not the case, since the perjury statutes of the United States Code make it a crime to make false statements to the legislative and judicial branches of the Government.

The United States Attorney has presented to the Court a number of instances where Courts have applied the word "department" to the legislative and judicial branches of the Government and, in so doing, have referred not only to the legislative branch as a "department" but have also referred to the executive and judicial branches as "departments." For instance, as far back as *Foster* v. *Neilson*, 2 Peters 253 (1829), Chief Justice Marshall uses the language (p. 314): ". . . the treaty addresses itself to the political, not the judicial department; . . ." See also *Mississippi* v. *Johnson*, 4 Wall. 475 (1867), where Chase, C. J. says (p. 500):

> "The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department; . . ."

The United States Attorney also calls attention to the fact that in the recent edition of the United States Constitution, Annotated, the three coordinate branches of the Government are referred to as "departments."

There could be no quarrel with these arguments but the short answer is that, in the opinion of the Court, Section 1001 of Title 18 uses the word "department" in a limited sense, as shown by Section 6 of that Title, all as above referred to. Further than this, while it is true that each of the three branches of the Government may be referred to at times as "departments" of the Government, there would seem to be no justification for using the word "department", as referred to in Section 1001, as referring to each of the three coordinate branches of the Government because Section 6, in its definition, refers to the "executive departments", such as the Department of State, etc. (See page 7 of this opinion.)

Counsel for the Government has conceded in open court that if the Court has a reasonable doubt as to the applicability of a criminal statute in a hearing upon a motion in arrest of judgment (although he insists that the instant case is one where there is no reasonable doubt), then that doubt should be resolved against the Government and in favor of the defendant, thereby placing the burden of appeal upon the Government. This is particularly so in this case since counsel for both sides have stated that it will ultimately reach the Supreme Court. For the reasons expressed in this opinion, the Court has a reasonable doubt as to the applicability of Section 1001 to the legislative and judicial branches of the Government. I resolve this reasonable doubt in favor of the defendant.

The defendant's motion in arrest of judgment is granted, based on the Court's construction of the statute involved.

The Government is able to appeal this case directly to the United States Supreme Court under authority of Title 18, United States Code, Section 3731, since this decision is based upon the construction of Section 1001, Title 18, upon which the indictment in this case was founded.

Counsel will prepare and submit on notice the appropriate order.

WALTER M. BASTIAN,
United States District Judge.

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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United States v. *Sischo*, 262 U. S. 165	24
United States v. *Strobach*, 48 Fed. 902	7, 19
United States ex rel. Marcus v. *Hess*, 317 U. S. 537	5, 6, 15, 25
Warner v. *Goltra*, 293 U. S. 155	24

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a construction of the statute upon which it is founded is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the Disbursing Office of the House of Representatives is a "department or agency" within the meaning of 18 U. S. C. 1001, which forbids the wilful falsification by a scheme of a material fact "in any matter within the jurisdiction of any department or agency of the United States."

STATUTE INVOLVED

18 U. S. C. 1001, 62 Stat. 749, provides:[1]

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On November 10, 1953, an indictment in eighteen counts charging violations of 18 U. S. C. 1001 was returned against appellee in the United States District Court for the District of Columbia. Each count charged that appellee, in a

[1] Predecessor statutes are set forth in the Appendix, *infra*.

matter within the jurisdiction of a department and agency of the United States, namely, the Disbursing Office of the House of Representatives, wilfully falsified by a scheme a material fact. The scheme alleged was that appellee, while a member of the House of Representatives, presented to the Disbursing Office of the House a clerk-hire allowance form in which he represented that a person named therein was his clerk and that he thereafter allowed the Disbursing Office to issue salary checks to such person at the close of each pay period, whereas the person so designated, to whom the salary checks were made payable, was not in fact a clerk to appellee, as appellee well knew. By this means appellee was able to convert to his own use the compensation paid to such clerk. (R. 1–8.)

At the close of the Government's case, the trial court granted appellee's motion for acquittal as to counts eight through eighteen, inclusive, and denied it as to counts one through seven, inclusive. The court submitted these seven counts to the jury, which returned a verdict of guilty (R. 22). Appellee filed a motion in arrest of judgment or, in the alternative, for a judgment of acquittal or new trial (R. 8–9). The court denied the motions for acquittal and a new trial but granted the motion in arrest of judgment (R. 20), stating that it had reasonable doubt as to whether the Disbursing Office of the House of Representatives is a "department or agency" of the United States

within the purview of 18 U. S. C. 1001 and that it would resolve this doubt in appellee's favor (R. 19).

SUMMARY OF ARGUMENT

I

The protection of the funds which the United States holds in public trust is a matter patently within the jurisdiction of the United States, and a scheme to deprive the Government of its substance by false representations of material facts made to a federal disbursing agency provides a classic example of the vice at which the federal false-statements statute is aimed.

The term "department or agency of the United States," as it appears in 18 U. S. C. 1001, is used in its broad generic sense and covers all agencies of government, at least insofar as they act in an administrative, a fiduciary, or a housekeeping capacity. The definition of "agency" in 18 U. S. C. 6—the general definition for the Criminal Code—shows a design to throw a protective blanket over all administrative or managerial functions of government, and refutes the notion that Congress meant to cover only those agencies within the executive branch. Certainly, the words "authority * * * of the United States" contained in that definition are broad enough to cover any disbursing office of the United States.

That the Disbursing Office of the House of Representatives is in every sense a United States

agency is shown by the following facts: the Disbursing Officer is under a statutory duty to post a fidelity bond with the Secretary of the Treasury; he is authorized to draw checks upon the Treasury of the United States; and the books of the office are subject to audit in the same manner as those of other federal disbursing agencies.

The case law fully supports the view that the false-statements Act is not to be restricted to false representations made to agencies within the executive branch. In *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, which arose under a statute which is the immediate precursor of 18 U. S. C. 1001 and which likewise made violation depend on whether the matter was one "within the jurisdiction of any department or agency of the United States," the court of appeals sustained the conviction of a sergeant at arms of the House of Representative who submitted falsified statements to the General Accounting Office, an arm of Congress. In *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, this Court construed an earlier statute relating to false claims and false statements as applying to a claim lodged with a local municipal officer, although the statute in terms related to presentation to officers of the United States of false claims against the United States. The Court so held because the federal government had made contribution by grants-in-aid to the fund out of which the claim was to be

satisfied; because the manifest purpose of the Act was "to provide protection against those who would 'cheat the United States' "; and because the safeguard for federal funds provided by the law was not to be deemed "dependent upon the bookkeeping devices used for their distribution." A *fortiori*, the present statute must be construed to cover a false statement presented to an agency which is a duly constituted organ of the federal establishment, regularly disbursing monies drawn from the Treasury of the United States.

II

The historical evolution of the statute fortifies the interpretation of its language as embracing agencies of the Government which are not within (or exclusively within) the executive branch, and in particular as embracing all agencies which handle funds of the United States. The history of the statute is one of constant expansion to encompass frauds upon the Government, especially frauds upon the federal revenue. *United States ex rel. Marcus* v. *Hess, supra.*

The original Act of March 2, 1863, while limited to persons in the land or naval forces, punished any fraudulent "claim upon or against the Government of the United States, or any department or officer thereof" filed with "any person or officer in the civil or military service of the United States." This clearly comprehended all departments or agencies of Government. The

Act also punished any false statement for the purpose of obtaining approval of "such claim."

In 1873 the statute was expanded to make it apply to "every person" (not merely those in the armed forces) who filed a false claim (or who made false statements and entries in connection therewith) with any person or officer "in the civil, military, or naval service." The 1873 Act was held applicable to a false claim and accompanying statements submitted to a federal district court. *United States* v. *Strobach*, 48 Fed. 902 (C. C. M. D. Ala.).

In 1918 Congress added the language, "knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations," the language of present 18 U. S. C. 1001 with which we are here concerned. This language in the 1918 Act applied to such representations when made "for the purpose of obtaining or aiding to obtain the payment or approval of such claim" (*i. e.*, a claim presented to any person or officer in the service of the Government) or "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States or any department thereof." This language clearly punished any falsification in connection with a claim against the United States, no matter the federal official to whom it was addressed.

The language relating to concealment by trick, scheme, or device and to false or fraudulent statements was unchanged by the 1934 amendment. However, the language was no longer made referable to the purposes described in the 1918 Act, *i. e.*, for the purpose of obtaining payment of a claim or the purpose of cheating and swindling. Instead, it was made referable to "any matter within the jurisdiction of any department or agency of the United States." The deletion of the cross-reference between false statements and false claims did not represent an intent to narrow the coverage of the statute. It merely reflected the explicit Congressional intent to *broaden* the false-statement provision to cover, additionally, *non-monetary* frauds, such as those which had arisen in connection with "hot oil." The omission of the term "such claim" necessitated an independent subject-matter description to show the coverage of the false-statement prohibition. There is nothing on the face of the new phraseology—"in any matter within the jurisdiction of any department or agency of the United States"—or in the committee reports or debates in Congress to indicate that this language was intended to leave the federal treasury unprotected from falsifications and schemes perpetrated through an agency of government outside the executive branch.

In the 1948 revision of the Criminal Code, the prohibitions on false claims and on false state-

ments were made the subject of separate sections, but there is absolutely no indication that the revisers intended to make the slightest change in the substance or policy of either one. Accordingly, section 6 of the 1948 revision (which undertook to define "department" and "agency" for purposes of some 71 different statutes) should not be narrowly read to create an unforeseen and unintended result.

ARGUMENT

I

THE DISBURSING OFFICE OF THE HOUSE OF REPRESENTATIVES IS A "DEPARTMENT OR AGENCY OF THE UNITED STATES," AND FALSE STATEMENTS MADE TO THAT AGENCY OF THE GOVERNMENT ARE WITHIN THE AMBIT OF 18 U. S. C. 1001

Factually, this case involves a scheme to cheat the United States of its substance by false representations. Nothing could be more obviously or directly within the jurisdiction of the United States than the protection of the funds which it holds in public trust. And it is eminently plain from the history of the various false-claims and false-statements statutes which Congress has enacted from time to time that a dominant (though not exclusive) purpose of such legislation has been to protect the federal treasury from improper diversions of money in connection with any and all of those manifold fiduciary and housekeeping functions which the Government necessarily performs. See discussion of legislative history, Point II, *infra*.

But while appellee fully concedes, as he must, that the safeguard of public money is a matter within the jurisdiction of the United States, he argues that the statutory language ("within the jurisdiction of any department or agency of the United States") is narrower, and that "department or agency" should be limited to organs of the executive branch and hence not deemed to cover the Disbursing Office of the House of Representatives. It is the Government's position, on the other hand, that those terms, particularly the term "agency", are used in their broad generic sense to cover all agencies of government, at least insofar as they act in an administrative, a fiduciary, or a housekeeping capacity, and that so long as they are agencies acting in that capacity and dispensing monies of the United States it is immaterial whether they are answerable to the President (as in the case of the traditional executive departments) or to Congress (as in the case of such agencies of government as the General Accounting Office or the House Disbursing Office).[8] In our view, it would be a mutilating construction of the Act to make its incidence depend on whether a United States

[8] We do not argue that this section, which deals with cheating the Government, applies to false testimony before Congress or its committees, when Congress is acting in a legislative capacity. There is therefore no foundation to the fear expressed in appellee's motion to affirm (pp. 12-13) that the Government's construction would result in supersedure of the perjury laws.

disbursing agency to which a false representation is made sits at one end of Pennsylvania Avenue or the other.

The terms "department" and "agency" are not defined in 18 U. S. C. 1001 or in predecessor statutes. During the general revision of the Criminal Code in 1948, however, Congress adopted 18 U. S. C. 6, which provides:

> As used in this title:
>
> The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.[5]
>
> The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context

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[5] The executive departments enumerated in section 1 of Title 5, as amended, include:

The Department of State
The Department of Defense
The Department of the Treasury
The Department of Justice
The Post Office Department
The Department of the Interior
The Department of Agriculture
The Department of Commerce
The Department of Labor
The Department of Health, Education, and Welfare

shows that such term was intended to be used in a more limited sense.'

The definition of "agency" is one of broad sweep. It shows, on the face of it, a design to throw a protective blanket over all administrative functions of government. That the revisers meant to use the term "agency" in its general sense, and not as a narrow term of art, is further emphasized by the concluding clause, "unless the context shows that such term was intended to be used in a more limited sense."

Certainly, the definition precludes the view that Congress meant to cover only those governmental units which are subordinate and responsible to the Chief Executive. Congress was well aware that many establishments, commissions, administrations, authorities, boards and bureaus of the United States perform quasi-legislative and quasi-judicial duties and cannot be deemed purely executive agencies under the complete control and command of the President. See *Humphrey's Executor* v. *United States*, 295 U. S. 602, 625, holding the Federal Trade Commission "inde-

[1] The Revisers Note to 18 U. S. C. 6 states: "This section defines the terms 'department' and 'agency' of the United States. The word 'department' appears 57 times in title 18, U. S. C., 1940 ed., and the word 'agency' 14 times. It was considered necessary to define clearly these words in order to avoid possible litigation as to the scope or coverage of a given section containing such words. (See *United States* v. *Germaine*, 1878, 99 U. S. 508, 25 L. ed. 482, for definition of words 'department' or 'head of department.')" House Report No. 304, 80th Cong., 1st Sess. (1947).

pendent of executive authority, *except in its selection* * * *." It knew that other agencies, such as the General Accounting Office, are made independent of the Executive Department by express statutory provision.[5]

While the Disbursing Officer of the House is subordinate to the Clerk of the House, who in turn is directly responsible to the members of the House, it does not follow that he is any less an agent of the United States than other officials who occupy fiduciary posts and handle public monies. Thus, he is under a duty to execute a fidelity bond and to file it with the Secretary of the Treasury (see 2 U. S. C. 75); he draws checks upon the Treasury of the United States; he makes periodic accountings of his funds to the General Accounting Office and submits to the regular audits of that Office. (R. 24–26.)

Appellee suggests, however, that even if the Disbursing Office might be deemed an "agency," if that term stood undefined, the statutory definition in section 6 fails to cover it.[6] To this there are several answers. In the first place, as argued above, the enumeration of the various types of governmental agencies in the definition unmistakably manifests a purpose to cover all governmental agencies performing administrative func-

[5] As to the status of the General Accounting Office, see Act of June 10, 1921, c. 18, section 301, 42 Stat. 23, 31 U. S. C. 11.

[6] See respondent's discussion of *Romero* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, Motion to Affirm, p. 9.

tions irrespective of the branch (or branches) of government to which they may be thought to belong. Secondly, if it be deemed essential to rely upon specific words in the definition, the words "authority * * * of the United States" are plainly broad enough to cover any disbursing office of the United States. Thirdly (as we show under Point II below), the revisers who formulated the definitions appearing in section 6 had no intent to change any of the substantive provisions of the Criminal Code, and the legislative history of section 1001 and antecedent statutes supports the view that there is no warrant for restricting the concept "agency of the United States," as used in section 1001, to agencies of the United States within the executive branch of the Government. Finally, the relevant case law similarly supports this view.

While no cases involving the question at issue have been decided since the 1948 revision, two cases—one arising under a predecessor statute and another under a closely related statute—are closely in point.

In *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, the Government indicted the Sergeant at Arms of the House of Representatives under 18 U. S. C. (1946 ed.) 80 (Appendix, *infra*, p. 34), the immediate precursor of 18 U. S. C. 1001. The basis of the charge was that the Sergeant at Arms made false financial statements and concealed a short-

age by trick, scheme, and device in rendering reports to the General Accounting Office. The statutory language, like that in the instant case, made violation depend on whether the matter was one "within the jurisdiction of any department or agency of the United States." In sustaining the conviction, the court of appeals necessarily determined, albeit *sub silentio,* that an arm of the Congress, the General Accounting Office, was an agency of the United States within the statutory terms.

In *United States ex rel. Marcus* v. *Hess,* 317 U. S. 537, this Court, reviewing a *qui tam* action brought under R. S. §§ 3490–3493, had occasion to examine R. S. § 5438 as it applied to the presentation of false claims.[7] The respondent contractors had previously been indicted for violating R. S. § 5438 in that they had collusively rigged bids and obtained construction contracts, let by municipalities and school districts in Allegheny County, Pennsylvania, which were to be paid by the state from a joint fund to which the Public Works Administration had contributed.

[7] The pertinent language of section 5438 reads:

"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, * * *."

For the full text, see Appendix, *infra,* pp. 28–30.

They had pleaded *nolo contendere* and fines had been imposed. In the *qui tam* proceeding, the district court, construing section 5438 with "utter strictness," held that the claims were against the local municipalities and not against the United States. This Court, noting that section 5438 was criminal and to be given "careful scrutiny," nonetheless rejected the lower court's interpretation and looked behind the status of the paying officer, the municipal official, to the source of the money paid, the Treasury of the United States. The Court declared (p. 544):

> Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. While at the time of the passage of the original 1863 Act, federal aid to states consisted primarily of land grants, in subsequent years the state aid program has grown so that in 1941 approximately 10% of all federal money was distributed in this form. These funds are as much in need of protection from fraudulent claims as any other federal money, and the statute does not make the extent of their safeguard dependent upon the bookkeeping devices used for their distribution. The Senatorial sponsor of this bill broadly asserted that its object was to provide protection against those who would "cheat the United States." The fraud here could not have been any more of an effort to cheat the United

States if there had been no state intermediary.

There is at least equally good reason in this case to look beyond the Disbursing Office of the House of Representatives and to take account of the fact that it was the Treasury of the United States which was bearing the entire loss resulting from the falsifications. The money in the public treasury appropriated for congressional expenses is entitled to no less protection than money appropriated to other branches or for other purposes. And the safeguard of these public funds should not be made to depend upon the bookkeeping arrangements under which the disbursements are made.

II

THE LEGISLATIVE HISTORY OF 18 U. S. C. 1001 SUPPORTS THE VIEW THAT THE TERMS "DEPARTMENT" AND "AGENCY" ARE NOT LIMITED TO THE EXECUTIVE BRANCH OF THE GOVERNMENT

The historical evolution of the statute fortifies the interpretation of its language as embracing agencies of the government which are not purely subordinate to the executive branch, and in particular as embracing all agencies which handle funds of the United States. The history of the statute is one of constant expansion to encompass frauds upon the government, especially frauds upon the federal revenue.

Although Section 1001 acquired its present form in the general revision of the Criminal Code

in 1948 (Act of June 25, 1948, c. 645, 62 Stat. 683, 749), it had its genesis as far back as the Act of March 2, 1863, 12 Stat. 696, entitled "An Act to prevent and punish Frauds upon the Government of the United States."[8] While the 1863 Act was limited in application to "any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war," the protection was against any false, fictitious, or fraudulent "claim upon or against the Government of the United States or any department or officer thereof,"—clearly inclusive of all components of the Government. The breadth of the coverage is confirmed by the fact that it prohibited the group named from filing such false claims with "any person or officer in the civil or military service of the United States." And similarly the second clause of the Act of 1863 prohibited the making of any "false or fraudulent statement or entry" for the purpose of obtaining approval or payment of "such claim". Thus, as to the persons subject to the interdiction of the statute, the Act of 1863 prohibited the presentation of any false claim or any false statement in connection with such claim to any person or officer of the Government.

[8] The complete text of the Act of March 2, 1863, and of the other acts, hereinafter referred to, which comprise the significant legislative antecedents of 18 U. S. C. 1001, are set forth in the Appendix.

The Act of 1863 relative to false claims and false statements became Section 5438* of the Revised Statutes under the codification of December 1, 1873. The statute was there expanded to make the prohibition apply to "every person" and not merely to those in the land or naval forces or the military service of the United States, but the protection was still against the filing of a false, fictitious, or fraudulent claim upon "the Government of the United States, or any department or officer thereof" with any "person or officer in the civil, military, or naval service of the United States." The prohibitions of section 5438 against false statements and entries in connection with claims were in the same broad terms, applying to all parts of the Government. The statute was so interpreted by the courts. In *United States v. Strobach*, 48 Fed 902 (C. C. M. D. Ala.), involving a charge that defendant had presented a false claim to a marshal and caused the marshal to present the false claim to the district court for approval, and had used false affidavits to obtain the payment of the false claim, the defendant demurred to the indictment on the ground that the judge of the district court was not a person or officer in the civil service of the United States within the meaning of section 5438. Overruling the demurrer on this point, the court said (at p. 908):

> * * * We think that a United States judge is at all times an officer in the civil

* See Appendix, pp. 28–30.

> service of the United States, within the meaning of the statute, and that when a claim is presented to a court of which he is the presiding officer, it is presented to an officer in the civil service of the United States.

When Congress, in 1909, passed "An Act To codify, revise, and amend the penal laws of the United States", it redesignated section 5438 of the Revised Statutes as section 35 without making any significant change in its text. The scope of the prohibition against false claims and false statements relating to claims remained as broad and sweeping as they were under the original Act of 1863.[1]

In 1948 Congress passed "An Act To amend section thirty-five of the Criminal Code of the United States"[2] which significantly changed the language of section 35. Though the avowed purpose of this amendment was to extend the prohibitions of the section to include false claims and false statements made to "any corporation in which the United States of America is a stockholder," it worked other changes in the phrase-

[1] By the Act of May 30, 1908, c. 235, 35 Stat. 555, the penalty was reduced from a maximum of five years and a $5,000 fine to a maximum of two years and a $500 fine as applied to persons who purchased or received in pledge from a serviceman any article of issue which the serviceman had no lawful right to pledge or sell. There was nothing in this Act of 1908 which in any way altered the prohibitions of section 5438 against false claims and false statements.

[2] See Appendix, *infra*, pp. 31–34.

ology which are germane to this case. Thus, the amendment changed the second clause dealing with false statements relating to claims by adding to its already broad coverage the words:

> * * * or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall *knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations* * * *. [Emphasis added.]

It is significant that the italicized portion of this addition appears in the part of present section 1001 with which we are here concerned, and that this language related to any false statement or scheme in connection with any claim against the United States, no matter the federal official to whom presented. There can be no doubt that the 1918 statute, like the earlier legislation, covered false statements made to the Disbursing Office of the House of Representatives.

In 1934 Congress again expanded the statute, 48 Stat. 996, Appendix *infra*, pp. 34–36. The false-claims part continued the previous wording relating to claims against "the Government of the United States, or any department thereof." However, the language of trick or scheme and false statements, which in the 1918 Act referred to

false representations made "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof", was altered to read false statements, tricks or schemes "in any matter within the jurisdiction of any department or agency of the United States." The failure of the 1934 false-statement clause to refer back to the preceding language relating to "claims" is without the significance attached to it by the trial court (see R. 12–13). The presence of the phrase "such claim" in the false-statement provision of the 1918 act had limited that provision to false statements made in connection with a false claim for money or property.[12] The 1934 deletion of this cross-reference between false statements and false claims simply reflects Congress' purpose to *broaden* the false-statement provision to include *non-monetary* frauds, such as those in connection with "hot oil."[13] There is no reason to believe that

[12] *United States* v. *Cohn*, 270 U. S. 339; *United States* v. *Gilliland*, 312 U. S. 86.

[13] The purpose set forth in Senate Report No. 1202, 73d Cong., 2d sess., was threefold: to provide penalties for willful injuries to or depredations against any property of the United States, "any of its branches or departments," or any corporation in which the United States is a stockholder; to reach cases involving the shipment of "hot oil," where false papers were being presented although not in connection with a "claim"; and, to reach those cases of contractors, paid for work done by them from the Public Works Administration, who filed false certificates as to actual wages paid.

the deletion of the phrase "such claim" was intended to narrow the scope of the coverage clause, which was no longer referable to the phrase "the Government of the United States, or any department or officer thereof." The omission of the term "such claim" necessitated an independent subject-matter description to show the coverage of the false-statement prohibition. The new phraseology, "in any matter within the jurisdiction of any department or agency of the United States," is not on its face narrower than its antecedent, and there is nothing in the committee reports [14] or the debate in Congress [15] to indicate that the new phrasing of the false-statement clause, resulting from technical drafting changes, was intended to leave the federal treasury unprotected from tricks or schemes which arose outside an executive agency. As pointed out above, false statements and tricks in connection with claims presented to any organ of the government had previously been made punishable. *Supra*, pp. 17–21. It would be anomalous to hold that, in an amendment designed to broaden the statute, Congress, *sub silentio*, narrowed its scope in relation to schemes and tricks affecting the federal treasury.

In the general revision of title 18 by the Act of June 25, 1948, the related prohibitions against false claims and false statements were separated

[14] S. Rep. No. 1262; H. Rep. No. 1453, 73d Cong., 2d sess.
[15] 78 Cong. Rec. 8136, 11270.

and given different section members.[18] The prohibitions against false claims, and conspiracy to file false claims, were renumbered sections 286 and 287; the prohibition against false statements was numbered section 1001. There is no evidence that Congress meant to change the scope of the respective prohibitions. That no such change was intended is shown by the continuation of the former phraseology, and fortified by the general rule of construction expressed by this Court in *United States* v. *Ryder,* 110 U. S. 729, 740, that "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." See also *Anderson* v. *Pacific Coast S. S. Co.,* 225 U. S. 187; *United States* v. *Sischo,* 262 U. S. 165; *Warner* v. *Goltra,* 293 U. S. 155; *Pott* v. *Arthur,* 104 U. S. 735, and *Stewart* v. *Kahn,* 78 U. S. (11 Wall.) 493.

It seems clear, as discussed above, that under the 1934 phraseology, from which present section 1001 stems, any scheme to cover up a material fact relating to the expenditure of monies of the United States would have been deemed a scheme "in a matter within the jurisdiction of a department or agency of the United States." The cases

[18] The Act of April 4, 1938, 52 Stat. 197, merely divided the section into three subsections and provided a lighter penalty for those who steal or destroy Government property whose value is less than $50. The scope of the false statement clause, made a part of section 35 (A), remained the same.

of *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, and *Romney* v. *United States*, 167 F. 2d 521 (C. A. D. C.), certiorari denied, 334 U. S. 847, discussed in Point I, *supra*, pp. 14–17, support this view. Under these circumstances, section 6 of the 1948 Revision should not be read so narrowly as to change the design and purpose of section 1001 and to create an unforeseen and unintended result.

From its inception, the statute on which section 1001 is based has protected funds of the United States, no matter by what branch or unit of the federal government they are expended. The history of the statute has been one of constant expansion. The narrow interpretation of the court below is thus contrary not only to the language but to the historic development of the statute and the manifest Congressional intent.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court arresting the judgment should be reversed.

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DECEMBER 1954.

APPENDIX

Act of March 2, 1863 (c. 67, 12 Stat. 696):

> * * * any person in the land or naval forces of the United States, or in the militia in actual service of the United States, in time of war, who shall make or cause to be made, or present or cause to be presented for payment or approval to or by any person or officer in the civil or military service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; any person in such forces or service who shall, for the purpose of obtaining, or aiding in obtaining, the approval or payment of such claim, make, use, or cause to be made or used, any false bill, receipt, voucher, entry, roll, account, claim, statement, certificate, affidavit, or deposition, knowing the same to contain any false or fraudulent statement or entry; any person in said forces or service who shall make or procure to be made, or knowingly advise the making of any false oath to any fact, statement, or certificate, voucher or entry, for the purpose of obtaining, or of aiding to obtain, any approval or payment of any claim against the United States or any department or officer thereof; any person in said forces or service who, for the purpose of obtaining or enabling any other person to obtain from the Government of the United States, or any

department or officer thereof, any payment or allowance, or the approval or signature of any person in the military, naval, or civil service of the United States, of or to any false, fraudulent, or fictitious claim, shall forge or counterfeit, or cause or procure to be forged or counterfeited, any signature upon any bill, receipt, voucher, account, claim, roll, statement, affidavit, or deposition; and any person in said forces or service who shall utter or use the same as true or genuine, knowing the same to have been forged or counterfeited; any person in said forces or service who shall enter into any agreement, combination, or conspiracy to cheat or defraud the Government of the United States, or any department or officer thereof, by obtaining, or aiding and assisting to obtain, the payment or allowance of any false or fraudulent claim; any person in said forces or service who shall steal, embezzle, or knowingly and wilfully misappropriate or apply to his own use or benefit, or who shall wrongfully and knowingly sell, convey, or dispose of any ordnance, arms, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or to be used for the military or naval service of the United States; any contractor, agent, paymaster, quartermaster, or other person whatsoever in said forces or service having charge, possession, custody, or control of any money or other public property, used or to be used in the military or naval service of the United States, who shall, with intent to defraud the United States, or wilfully to conceal such money or other property, deliver or cause to be delivered to any other person having authority to receive the same any amount of such money

or other public property less than that for which he shall receive a certificate or receipt; any person in said forces or service who is or shall be authorized to make or deliver any certificate, voucher, or receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other public property so used or to be used, who shall make or deliver the same to any person without having full knowledge of the truth of the facts stated therein, and with intent to cheat, defraud, or injure the United States; any person in said forces or service who shall knowingly purchase or receive, in pledge for any obligation or indebtedness, from any soldier, officer, or other person called into or employed in said forces or service, any arms, equipments, ammunition, clothes, or military stores, or other public property, such soldier, officer, or other person not having the lawful right to pledge or sell the same, shall be deemed guilty of a criminal offence, and shall be subject to the rules and regulations made for the government of the military and naval forces of the United States, and of the militia when called into and employed in the actual service of the United States in time of war, and to the provisions of this act. And every person so offending may be arrested and held for trial by a court-martial, and if found guilty shall be punished by fine and imprisonment, or such other punishment as the court-martial may adjudge, save the punishment of death.

Revised Statutes, 1873–1874:

SEC. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval,

to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or

indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

Criminal Code (1909), 35 Stat. 1088:

SEC. 35. Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in any civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance or any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the

military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipment, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

Act of October 23, 1918 (c. 194, 40 Stat. 1015):

* * * Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or

any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, posses-

sion, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance,

shall be fined not more than $500 or imprisoned not more than two years, or both.

Act of June 18, 1934 (c. 587, 48 Stat. 996):

* * * Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for

the War or Navy Departments of the United States; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any

soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States, or furnished by the United States under such allowance, shall be fined not more than $500, or imprisoned not more than two years, or both.

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE UNITED STATES

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ERNEST KING BRAMBLETT

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REPLY BRIEF FOR THE UNITED STATES

In our main brief we have shown that the false-statements act (18 U. S. C. 1001), which prohibits false statements "in any matter within the jurisdiction of any department or ageney of the United States," protects the House Disbursing Office as well as all other federal disbursing agencies in all branches of the Government. Our conclusion, based on an examination of the meaning of the word "ageney" as used in the false-statements act, was buttressed by an examination of the history of Section 1001, which demonstrates

conclusively that the false-statements act was intended by Congress to protect against frauds against the federal revenue wherever occurring, and that the purpose of the successive amendments to that section has been to expand, and never to restrict, the scope of its application.

This reply brief deals with certain additional matters raised by the contentions of appellee.

I. CONGRESS HAS NEVER WITHDRAWN THE PROTECTION OF THE FALSE-STATEMENTS STATUTE FROM AGENCIES IN THE LEGISLATIVE BRANCH

This case involves a hard-core violation of the false-statements statute—the submission of false statements to a federal disbursing officer for the purpose of perpetrating a fraud upon the federal revenue.

Appellee concedes (Br. 19–20) that until 1934, or for a period of sixty-one years, Congress succeeded in protecting its own disbursing agencies from fraud through false statements. But appellee contends that in 1934 (Br. 20), or at least in 1948 (Br. 4–10), Congress withdrew this protection from all agencies of the legislative branch. The sweeping nature of this suggestion becomes apparent when it is considered that the agencies of the legislative branch include, in addition to the House and Senate Disbursing Offices, the Government Printing Office, the Library of Congress, the Architect of the Capitol, and, above

all, the auditing arm of the Congress, the General Accounting Office.[1] No direct evidence of any intent to make such sweeping changes is cited. Appellee relies rather on inferences drawn from the fact that in 1934 and again in 1948 Congress was explicit in describing the changes in the statute, and the matters to which the Congressional reports adverted happened to concern problems in the executive branch. On this flimsy basis appellee asks this Court to announce a repeal by implication of the false-statements statute insofar as it applies to all legislative agencies.

A. THE 1934 AMENDMENT

In 1934, Congress dropped from the false-statements statute the reference to claims and broadened it to cover "any matter within the jurisdiction of any department or agency of the United States." (See our main brief, 22–23.) As appellee recognizes (Br. 20), Congress was explicit in giving its reasons for this change. The revised language was intended to broaden its scope to cover, in addition to the hard-core monetary frauds, non-monetary frauds against the Government (*ibid.*). *United States* v. *Gilliland*, 312 U. S. 86. The reports and the debates also indicate that no changes other than those

[1] See United States Government Organization Manual 1954–1955, pp. 31–47. With respect to the status of the General Accounting Office, see further p. 19, *infra*.

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enumerated were intended.[2] There is therefore no warrant for appellee's extraordinary and internally inconsistent assertion that Congress "wanted to *restrict* the operation of the new statute to the only branch of the government which was then demanding *additional* protection against fraud" (Br. 21). [Emphasis added.]

B. THE 1948 CODIFICATION OF THE CRIMINAL CODE

Appellee further argues that this Court must hold that Congress has withdrawn the protection of the false-statements statute from the legislative agencies, because of the definition of the word "agency" which is included in the 1948 Criminal Code (Br. 2–10).

In this connection appellee stresses and reiterates the fact that the word "agency," as used in the Criminal Code, was intended to embrace all of the various instrumentalities of the executive branch (Br. 4–10). Of course it does. There is no dispute about this. The revisers' notes make this clear.

But it is quite another thing to assert, as does appellee (Br. 10), that the revisers have "unequivocally stated that the signification of the term 'agency' is *limited* to the executive branch of the government alone." [Emphasis added.] The revisers' notes may be searched in vain for

[2] S. Rep. No. 1202, 73d Cong., 2d Sess., p. 1; H. Rep. No. 1463, 73d Cong., 2d Sess., pp. 1–3; 78 Cong. Rec. 8136–8137, 11270.

any indication that the revisers intended to restrict or confine the meaning of the word "agency" in any way. On the contrary, their explicit purpose was to assure that the word embraced Government-owned and -controlled corporations. See, *e. g.*, note following 18 U. S. C. 201. Had there been any purpose to restrict the meaning of "agency" to establishments in the executive branch of the Government, this would affirmatively appear. We are confident of this, because Mr. W. W. Barron, the chief reviser, explained in his testimony in support of the revision that:

> Every substantive change, no matter how minor, is fully explained so that if you in your discretion see fit to make these notes part of your report, they will adequately serve to interpret every proposed change.[3]

The revisers' notes were in fact made a part of the Congressional reports and the reports reiterate that the revisers' notes explain in detail every change made.[4] Nor would the removal of the protection of the false-statements statute from monetary violations affecting the legislative branch have been in any sense a minor change. If either the revisers or Congress had intended

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[3] Hearings before the Committee on Revisions of the Laws, House of Representatives, 68th Cong., 2d Sess., on H. R. 5450, December 6, 1944, p. 11.

[4] H. Rep. 304, 80th Cong., 1st Sess., p. 9; see also S. Rep. 1620, 80th Cong., 2d Sess., p. 1.

to remove the protection of this statute from the General Accounting Office, the Government Printing Office, the Library of Congress, the Architect of the Capitol, and the disbursing agencies of Congress, they certainly would have made that intention clear. Indeed, it cannot be that Congress effected such a sweeping change in the law *sub silentio*, when at the same time it announced in its reports that *every* change made in the revision was spread upon the record.

Nor does an examination of the statutory language in context or out of context require this Court to frustrate the manifest intent of Congress.

The revisers added two definitions to apply generally to the Criminal Code. 18 U. S. C. 6. The first, covering the word "department," is restrictive:

> The term "department" *means* one of the executive departments * * * unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government. [Emphasis added.]

The fact that the revisers used a verb of restriction and then added a proviso noting that the word "department" might refer to the legislative and the judicial branches, as well as the executive branch, should be noted.

But when, in the next paragraph, the revisers defined the more general term "agency," they

carefully avoided use of any term of restriction and instead provided that:

> The term "agency" *includes* any department, independent establishment, commission. . . . [Emphasis added.]

As this Court has many times had occasion to note, the verb "includes" is not one of limitation. Particularly when used in apposition to the verb "means," the word "includes" "cannot reasonably be read to be the equivalent of 'shall mean' or 'shall include only.'" *American Surety Co.* v. *Marotta*, 287 U. S. 513, 517. "The protection [of an act of Congress] cannot thus be frittered away." *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 99–100. See *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 188–189; *Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 125, note; *Harris* v. *State*, 175 So. 342, 343–344 (Miss.).

"Agency" is defined as the all-inclusive word. The structure of the two definitions indicates that in the definition of "agency" Congress intended to expand, not to restrict, to include, not to exclude. This becomes manifest when it is noticed that in every instance in the Code where Congress has restricted the word "agency" to instrumentalities "in the executive branch", it has used the verb "means". See definitions quoted in appellee's brief, pp. 11–13.[5] On the

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[5] See further, 5 U. S. C. 133z–5; 31 U. S. C. 65a; 40 U. S. C. 472 (a); 50 U. S. C. (App.) 458e; 50 U. S. C. (App.) 1213

other hand, in instances where Congress has intended the definition of "agency" to embrace governmental agencies generally, it has provided, as in the Criminal Code, that the word "agency" "includes" the enumerated instrumentalities. *E. g.*, 28 U. S. C. 451 (Judicial Code); 28 U. S. C. 2671 (Tort Claims Act). It is obvious that the definition in the Judicial Code (which is identical to that in the Criminal Code) was intended to include legislative agencies. See, *e. g.*, 28 U. S. C. 1358 (eminent domain); 28 U. S. C. 1733 (Government records). The definition of "agency" in the Tort Claims Act has specifically been held by the Comptroller General to embrace legislative agencies. 26 Comp. Gen. 891.

Where then is it "unequivocally stated that the signification of the term 'agency' is *limited* to the executive branch of the government alone"? The Court will find this only in appellee's brief (Br. 10).

It does not assist appellee's position to point out that where Congress intended certain Code provisions to apply to Congress or its committees as such, it has in certain instances, such as in the statutes relating to bribery and to influencing witnesses (Appellee Br. 10–11), referred both to agencies and to Congress. This language is neces-

(1). Cf. 40 U. S. C. 57a; 40 U. S. C. 304e; 42 U. S. C. 1522; 42 U. S. C. 1592n. In instances where Congress has limited the meaning of "agency" in other respects, it has similarly used the verb "means". See 5 U. S. C. 1001; 40 U. S. C. 472 (b); 42 U. S. C. 1814.

sary to embrace these legislative activities. As we have been at pains to state, we do not suggest that the word "agency" embraces the legislative functions of Congress (Govt. Main Br. 10, n. 2). We insist only that it covers the disbursing agencies of Congress and other agencies in the legislative branch, which, as we spell out below, have uniformly been regarded as agencies by the Congress and the legislative and executive agencies which deal with them.

Nor is it persuasive (Appellee Br. 11–13) that in provisions of the Code which apply only to activities of the executive branch, such as Title 5, which covers the executive departments, or chapters relating to the Foreign Service (22 U. S. C. 802), termination of war contracts (41 U. S. C. 103), atomic energy (42 U. S. C. 1818), disaster relief (42 U. S. C. 1855a), or the Federal Register (44 U. S. C. 304), Congress has defined the word "agency" to mean departments, commissions, establishments, etc., "in the executive branch of the Government." These do not show that "Congress does not employ [the term "agency"] when it wants to describe a legislative or judicial officer" (Appellee Br. 11). On the contrary, these instances suggest that when Congress intends that the word "agency" should not have its usual meaning, but should be restricted to agencies in the executive branch, it so expressly provides. Indeed, in certain sections of the Code applicable to all three branches of

the Government, Congress has explicitly used the word "agency" to describe agencies in the legislative branch. See, *e. g.*, 31 U. S. C. 67 (a), 67 (b), 65b, 66d, which concern the auditing of accounts of, *inter alia*, "legislative agencies," and 40 U. S. C. 472 (b) relating to the chapter of the Code which provides for the management and disposal of Government property.[6]

Finally, appellee contends that this Court should discover a Congressional intent to limit the false-statements statute to agencies of the executive branch in order to avoid "superseding the perjury laws by a new statute which covered false statements made to any branch of the federal government" (Br. 21, 15–16, 18). This is not an issue presented by the facts of this case. Statements submitted to the House Disbursing Office, like the clerk-hire forms on which this case is based, are not sworn. These statements are

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[6] Inclusion of the designation "legislative" before "agency" in 31 U. S. C. 67 (a), 67 (b), etc., was indicated, owing to the restrictive definitions in other sections of Title 31. See n. 15, *infra*.

40 U. S. C. 472 (b) provides:

> The term "Federal agency" means any executive agency or any establishment in the *legislative* or judicial *branch* of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol . . .). [Emphasis supplied.]

Congress was obviously excluded from the above definition inasmuch as the Architect of the Capitol is otherwise responsible for the acquisition and disposition of Government property at the Capitol. See, *e. g.*, 40 U. S. C. 162, 166c, 169–171, 174e, 175, 186.

covered by the false-statements statute and not by the perjury statute. On the other hand, we do not suggest that the false statements statute reaches any of the legislative activities of Congress. Thus, no question of overlap is involved here. And even if it were, that would not be a reason for reading out of the false claims statute offenses which fall plainly within its terms. In *United States* v. *Noveck*, 273 U. S. 202, this Court rejected the contention that the enactment of Section 145 (b) of the Internal Revenue Code impliedly repealed the general perjury statute insofar as that statute applied to false tax returns made under oath. And in *United States* v. *Beacon Brass Co.*, 344 U. S. 43, this Court held that an indictment under Section 145 (b) was valid, notwithstanding the fact that the making of false statements, charged in the indictment, also spelled out a violation of the general false-statements statute involved in the instant case. See further, *United States* v. *Gilliland*, 312 U. S. 86, 95–96.

II. CONGRESS AND THE COURTS HAVE UNIFORMLY REGARDED THE CONGRESSIONAL DISBURSING OFFICES AS AGENCIES OF THE UNITED STATES GOVERNMENT

This case is not the first to involve frauds against the disbursing agencies of Congress. It is the third in sixty-four years to put the status of

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the House disbursing agencies before the courts. In each of the previous cases, the courts held that the House disbursing agencies were subject to the same legislation as all other disbursing agencies of Government. These cases are discussed at length in this brief, however, for a reason which is even more important to the present issue. Each of the previous defalcations provoked new and additional legislation designed to prevent a recurrence of the fraud. This legislation in the aftermath of "fraud within the temple" demonstrates with force and clarity that Congress itself regards its disbursing offices as agencies of the United States Government.

A. THE SILCOTT DEFALCATION—1889

As of November 1889, it had been the long-continued practice of Members of the House, prior to vacation, to leave with the Sergeant at Arms signed receipts covering their pay which would become due month by month. Each month the Sergeant at Arms would present these receipts to the Treasury, withdraw the funds called for, and deposit the funds to the credit of the Members or forward it to them as directed. In 1889, after the money covering the Congressional payroll for November had been withdrawn from the Treasury, one Silcott, a cashier in the office of the Sergeant at Arms, absconded with most of it.

The question arose: who was to bear the loss—the Treasury or the Congressmen concerned? It

came to issue in a test suit brought by Congressman Crain against the United States in the Court of Claims. *Crain* v. *United States*, 25 Ct. Cls. 204. The issue turned on a question closely akin to the question involved in this case. Was the office of the Sergeant at Arms an agency of the United States, or was the Sergeant at Arms in the performance of his fiscal duties the private agent of the members? (*id.* 221). The Clerk of the House, whose fiscal duties were at that time the same as they are today, was recognized by all concerned as a public agent because of existing statutory recognition of his status as a disbursing officer of the United States (*id.* 232–233). The defense, however, invoked broad considerations of the Constitutional separation of powers in contending that the Sergeant at Arms, absent comparable statutory authorization, could not be considered a fiscal agent of the Government (*id.* 215). But the Court of Claims had no difficulty concluding, on the basis of established usage "in a matter so immediately within the personal knowledge and direct observation of members of Congress" (*id.* 233), that the Sergeant at Arms was a fiscal agent of the United States and that accordingly the United States was responsible for the loss which had occurred in his office.

Congress did not repudiate this decision. On the contrary, it moved promptly to supply legislation explicitly providing that the Sergeant at Arms "shall be a disbursing officer" (26 Stat.

645, 2 U. S. C. 80). When this bill was before the House, one member observed that this bill made the Sergeant at Arms "a civil officer of the United States," and that in view of the Constitutional separation of powers he ought to be regarded solely as an officer of the House. He added, in a remark which has an air of the prophetic in view of appellee's argument in the instant case, that unless such a distinction were made "there may be some difficulty in the Executive Departments, or possibly in the courts."[1] But the bill passed, the House obviously recognizing that the fiscal functions of its disbursing officers were separate and distinct from their other duties as officers of the House and appropriately a part of the "Treasury system itself" (21 Cong. Rec. 163).

A few weeks before this debate, in legislation which may have been prompted by the Silcott defalcation, Congress had provided that "all disbursing officers of the United States shall render their accounts quarterly" to the Treasury. Act of Aug. 30, 1890, c. 837, 26 Stat. 413; cf. 31 U. S. C. 497. Since that date the Clerk and the Sergeant at Arms have regularly submitted their accounts for audit. Until 1921 they were sub-

[1] 21 Cong. Rec. 1045O; see further 21 Cong. Rec. 162–164; H. R. Misc. Doc. 55, 51st Cong., 1st Sess., pp. 8–9 (Treasury view), 45–51.

mitted to the Treasury; since that date they have been submitted to the General Accounting Office.*

B. THE ROMNEY DEFALCATION—1946

At the close of 1946, with a change in the administration of the House about to take place, another scandal broke upon the office of the House Sergeant at Arms. It appeared that since 1925, one Romney, who had been cashier and since 1931 Sergeant at Arms, had carried as "cash on hand" various uncollectible checks and memoranda of debt covering moneys unlawfully loaned to various Congressmen and moneys embezzled by Romney and a former subordinate. As of December 31, 1946, the shortage totalled more than $143,000.

Romney had regularly submitted his account current to the General Accounting Office, including, for purposes of the report, the amount of the then existing shortage in "Cash on hand". Romney was indicted under the false-statements statute (Act of June 18, 1934, c. 587, 48 Stat. 996; quoted main brief, p. 34). The indictment charged that he knowingly and wilfully "made a false and fraudulent statement and representation in a matter within the jurisdiction of the General Accounting Office, an agency of the United

* See *Romney v. United States*, 167 F. 2d 521, 523 (C. A. D. C.), certiorari denied, 334 U. S. 847. The General Accounting Office was substituted for the Treasury by the Act of June 10, 1921, c. 18, 42 Stat. 23–24, 31 U. S. C. 41–42.

States." [9] After conviction by a jury, Romney appealed. His arguments on appeal were reminiscent of those made in the earlier *Crain* case. Romney contended that as an officer of the House he was not required by law to submit an account current to the General Accounting Office, and that in any event he was not required to submit a report on this cash on hand since he held it as private banker for the members of the House and not as a United States fiscal officer. *Romney* v. *United States*, 167 F. 2d 521, 524 (C. A. D. C.), certiorari denied, 334 U. S. 847. The Court of Appeals, after examining the relevant statutes,[10] held that Romney, as Sergeant at Arms, was under a legal duty to submit his accounts current to the General Accounting Office (167 F. 2d at 524–525). It further held, citing *Crain* v. *United States*, discussed *supra*, that inasmuch as Romney was a "disbursing officer" money in his hands continued to be the property of the Government until it was actually disbursed to the persons lawfully entitled to receive it (*id.* 526–527). The court noted in this connection that Romney was required to give bond to the United States conditioned on "the faithful keeping, application, and

[9] See Record in No. 753, O. T. 1947, *Romney* v. *United States*, pp. 385–386.

[10] R. S. 3622, as amended, 31 U. S. C. 496; Act of Oct. 1, 1890, c. 1256, 26 Stat. 645–46, 2 U. S. C. 78, 80, 82; Act of July 31, 1894, c. 174, 28 Stat. 206, as amended, 31 U. S. C. 72; Act of August 30, 1890, c. 837, 26 Stat. 413, as amended, 31 U. S. C. 197.

disbursement of such moneys as may be drawn from the Treasury and paid to him as disbursing officer of the United States"[3] (*id.* 526). The court thus gave renewed recognition to the status of the Congressional disbursing offices as fiscal agencies of the United States Government. It further necessarily held that the General Accounting Office was an agency of the Government within the meaning of the false statements statute.

Appellee urges this Court to ignore the *Romney* case as a precedent for three reasons (Br. 14–15).

In the first place, appellee argues, the question whether the General Accounting Office was an agency of the United States was not discussed by the Court of Appeals. But the Court of Appeals called it an "agency" (see, *e. g.*, 167 F. 2d at 524). Indeed, there can hardly be better evidence of the accepted meaning of the word than the fact that neither the Court of Appeals nor the parties should have considered that the General Accounting Office, an agency of the legislative branch, could be anything other than an "agency" within the meaning of the false-statements statute. Moreover, both sides mooted in the Court of Appeals and in the petition and brief in opposition in this Court the subsidiary question whether the internal operations of the Sergeant at Arms' Office, conducted for the convenience of members with funds due them but not yet paid, was "any

[3] See 2 U. S. C. 82.

matter within the jurisdiction of any department or agency of the United States."[12] While the Court of Appeals did not discuss the issue in these terms, the court held, as we have noted, that the funds in his hands consisted of public moneys for which Romney was required to account in his periodic reports to the General Accounting Office (*Id.* at 525–527).

In the second place, appellee argues that Title 18, with its definition of "agency," did not go into effect until after the *Romney* case was decided. True, but as we have shown above (p. 4 *et. seq.*), there is nothing in the revision indicating any purpose on the part of Congress to restrict the meaning of the word "agency" in the new Code. Moreover, as we show below, the action of the House after the *Romney* affair shows conclusively that it continued to consider its disbursing officers to be agencies of the United States.

Finally, appellee himself recognizes the absurdity of imputing to Congress an intent to remove the protection of the false-statements statute

[12] Brief for Appellant in No. 9561, *Romney* v. *United States* (C. A. D. C.), pp. 15–16; Brief for Appellee, pp. 18–23.

Petition for certiorari in No. 753, O. T. 1947, *Romney* v. *United States*, pp. 18–19. Thus, in his petition Romney argued: "There being no law authorizing 'The House Bank' it therefore follows that the misapplications involved in this cause were not 'in any matter within the jurisdiction of any department or agency of the United States.'" The Government explicitly answered this contention in its brief in opposition at pp. 10–12.

from its own auditing arm, the General Accounting Office. Thus, appellee notes that the General Accounting Office "partakes of the nature of an executive instrumentality," and suggests that "the courts might well conclude" that it should be considered an agency for purposes of the false-statements statute (Br. 14–15). But appellee goes on to suggest, in order to accommodate his theory that the false-statements statute applies *only* to agencies in the executive branch, that although the General Accounting Office is independent of the executive departments (31 U. S. C. 41), "this does not mean that it is outside the *executive branch* of the government" (Appellee Br. 15; emphasis in original). He omits to note, however, that Congress has declared in words as clear as words can be that the "General Accounting Office [is] a part of the legislative branch of the Government" (5 U. S. C. 133z–5).[18]

The *Romney* case, of course, involved subject matter within the intimate knowledge of Congress, and accordingly set in motion a variety of remedial measures. As a starter, the General Accounting Office was asked to make a detailed on-the-site audit.[19] See 95 Cong. Rec. 9475. Then,

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[18] United States Government Organization Manual 1954–1955, pp. 111, 34; H. Rep. 2556, 81st Cong., 2d sess., pp. 16–17.

[19] Previously, the General Accounting Office has merely audited the "accounts current" of the office. The on-the-site audit involved in addition a count of cash on hand, verification of all receivables, etc. See H. Rep. 500, 80th Cong., 1st Sess., p. 1; H. Rep. 2556, 81st Cong., 2d Sess., p. 11.

Congress appropriated funds to make up the shortage as reported by the General Accounting Office. 61 Stat. 610, see *Romney* v. *United States*, 167 F. 2d at 527. In addition, the House authorized the Sergeant at Arms to purchase insurance out of the contingent fund to protect against future losses. H. Res. 167, 80th Cong., 1st Sess., 93 Cong. Rec. 2971.

At the same time, a bill was introduced providing for a "periodic audit by the Comptroller General of all the accountable officers of the legislative branch." In its report recommending passage of the bill, the House Committee on Expenditures noted that certain officers and employees at the Capitol "because they receive public money which they are 'not authorized to retain as salary, pay, or emolument' (quoting 31 U. S. C. 496) are accountable therefor." H. Rep. 500, 80th Cong., 1st Sess. (to accompany H. R. 3138), p. 1. H. R. 3138 was passed by the House (93 Cong. Rec. 7085), but died in the Senate. The 81st Congress, however, at its first session provided for a periodic audit of the accounts of the House Sergeant at Arms (2 U. S. C. 62b, see 95 Cong. Rec. 9475), and in the Budget and Accounting Procedures Act of 1950 (Act of Sept. 12, 1950, c. 946, Sec. 117, 64 Stat. 837, 31 U. S. C. 67 (a)) provided generally that:

> the financial transactions of each executive, *legislative*, and judicial *agency* (including but not limited to the accounts of ac-

> countable officers, shall be audited by the General Accounting Office . . . [Emphasis added.][15]

In the House report relating to the Act, the word "agencies" alone is used to refer to the "executive, legislative, and judicial agenc[ies]" covered by the Act. See, *e. g.*, H. Rep. 2556, 81st Cong., 2d Sess., p. 13. The General Accounting Office has regularly audited the accounts of the House Disbursing Office pursuant to these provisions of law (R. 25).

In other words, while appellee was a member of Congress, and at a time when the attention of Congress was focused on providing additional protection for its disbursing agencies against fraud, Congress described the House Disbursing Office, including the Clerk and the Disbursing Clerk, both of whom are "accountable officers," as a "legislative *agency*."

In the light of the foregoing, the conclusion is inescapable that Congress, at least since its atten-

[15] The same phraseology is used in other provisions of the Act. See, *e. g.*, 31 U. S. C. 65b, 66d, 67 (b). The words "executive, legislative, and judicial agency" were undoubtedly used instead of the general, all-inclusive word "agency" because the Act itself contained a definition of "executive agency" (31 U. S. C. 65a). They were desirable, in addition, because 31 U. S. C. 2 defines "department or establishment" for purposes of chapter 1 of Title 31 to "*mean* any executive department, independent commission, board, bureau, office, *agency*," etc. but *not* to include "the *legislative branch* of the Government or the Supreme Court of the United States" (emphasis added).

tion was focused on the matter in 1890, has regarded its disbursing offices as agencies of the fiscal service of the United States and has subjected them to all the laws and given them all the protection accorded to all other fiscal agencies of the Government. Indeed, the members of Congress would undoubtedly be astounded at appellee's suggestion that in 1948, while they were actively working on legislation to protect against future frauds on Congress' own disbursing agencies, they silently withdrew the protection of the false-statements statute which those agencies had enjoyed since 1873.

III. ADMINISTRATIVE PRACTICE CONFIRMS THE FACT THAT THE HOUSE DISBURSING OFFICE IS AN AGENCY OF THE UNITED STATES

Appellee asserts that it requires a "fabricated definition" of the word "agency" to include the House "Disbursing Office but not congressional committees" (Br. 16). We have shown that this assertion ignores the fact that Congress itself regards its disbursing offices as agencies of the United States. In the day-to-day operations of Government, moreover, the House Disbursing Office (or the Clerk) is referred to and dealt with as an agency of the United States.

Thus, the Clerk of the House, in the discharge of his fiscal responsibilities, is known as the "House Disbursing Officer" (R. 24; cf. 2 U. S. C. 80 (House Sergeant at Arms); 2 U. S. C. 61 (Secretary of the Senate)). His assistant, who

is in active charge of the fiscal section of the Clerk's office, is known as the Disbursing Clerk (2 U. S. C. 75a; R. 24–25). The office itself is known as the House Disbursing Office, and this designation appears on its printed forms, such as the clerk-hire form involved in this case (R. 24).

Both the Clerk and the Disbursing Clerk are required to file with the Secretary of the Treasury a bond in the amount of $20,000 payable to the United States, conditioned on the faithful performance of their fiscal duties (2 U. S. C. 75, 75a). The Secretary of the Treasury approves the sureties, and may require the renewal or strengthening of the bonds at any time (6 U. S. C. 1–3). The cost of the bonds is paid by the Clerk and the Disbursing Clerk personally, and not by the House (6 U. S. C. 14).

Congress appropriates the moneys to be disbursed according to law by the Clerk (see, *e. g.*, General Appropriation Act, 1951, 64 Stat. 599–600), who is subject to fiscal regulations of the Secretary of the Treasury (5 U. S. C. 255; 31 U. S. C. 66b; see 31 C. F. R. ch. II, "Fiscal Service," Department of the Treasury). Funds appropriated are placed to the Clerk's credit, subject to his official check (R. 25) with the Treasurer of the United States (31 C. F. R. 208.1); checks drawn by the Clerk must state the purpose for which they are drawn (31 C. F. R. 208.6); the Clerk is supplied a monthly statement of his account (31 C. F. R. 208.10); the care and custody of blank checks and the use of the Clerk's

symbol number are subject to the provisions of 31 C. F. R. 208.13 (see R. 25 96); and the indorsement and payment of checks issued by the Clerk on the Treasury, including limitations of time for payment, are governed by the provisions of 31 C. F. R. 360–360.9. The Secretary of the Treasury annually submits to Congress a "Combined Statement of Receipts, Expenditures and Balances of the United States Government," required by 5 U. S. C. 265, which includes, *inter alia*, an analysis of the accounts of the Clerk. See, *e. g.*, Combined Statement for year ended June 30, 1954, pp. 90–92.

At least since 1890, the accounts of the House Clerk have been subject to independent audit. Since the establishment of the General Accounting Office, this function has been performed by that office (see R. 25). In the Budget and Accounting Procedures Act of 1950, provision was made for a more extensive audit, including on-the-site audits, of all legislative agencies, including the House Disbursing Office (31 U. S. C. 67, 65b, 66d; see H. Rep. 2556, 81st Cong., 2d Sess., pp. 13–14). Like other disbursing officers, the House Clerk can seek advance rulings on any question involving a payment to be made, which decision is thereafter binding on the General Accounting Office (31 U. S. C. 74). The Clerk has frequently availed himself of this privilege (see, *e. g.*, 2 Comp. Gen. 45; 22 Comp. Gen. 570; 27 Comp. Dec. 743; 27 Comp. Dec. 766). In sum, he is

treated and acts as a normal governmental fiscal agency.

Indeed, the word "agency" itself is commonly used to describe Government disbursing agencies, including the Clerk of the House.

Treasury Department circular No. 868 (Rev.), issued June 26, 1952, is addressed, *inter alia*, to "agencies of the Government," and applies principally to disbursing officers not in the executive branch of the Government. It requires all disbursing officers covered by the regulation, including the Clerk of the House, to furnish the Treasury Department a legible, signed copy of their accounts current. As Mr. Magill, Administrative Assistant to the Clerk of the House, testified in the instant case, the Clerk of the House "submits his account current to the General Accounting Office, and for information under a recent budget law he sends a copy of that to the Treasurer of the United States" (R. 25).

Treasury Department circular No. 940, issued February 17, 1954, contains instructions for the preparation and submission of certain reports "required of each *disbursing agency* of the Federal Government" (p. 1). Pursuant to this regulation, the Clerk of the House submits monthly to the Treasury Department form No. 584, "Report of receipts, payments, and related cash transactions." The first line of this report is captioned "department or agency reporting." The Clerk enters in the blank space "Clerk of the House of Representatives," followed by the sym-

bol number assigned by the Treasury Department for the account covered by the report.

General Accounting Office Form DA–2087, "Statement of Exceptions Outstanding" (revised 8–1–52), is captioned with blanks to be filled in by the General Accounting Office to show "accountable officer" and "department or agency." This form is sent quarterly (whenever exceptions are outstanding) to all agencies subject to fiscal supervision by General Accounting Office, including agencies in the legislative branch.

In sum, the Clerk, in his fiscal capacity—that is, the House Disbursing Office—is treated by all concerned, and acts, as one of the fiscal agencies of the United States, no different from any other governmental agency. It is clear that when in our main brief we spoke of the administrative and fiduciary functions of the Clerk (Br. 10), we were not "fabricating" any definition, but were referring to the established character of the House Disbursing Office.

IV. NO CANON OF CONSTRUCTION REQUIRES THAT THE WORDS OF A CRIMINAL STATUTE BE GIVEN THEIR NARROWEST POSSIBLE MEANING, CONTRARY TO THE PLAIN INTENT OF CONGRESS

We have no quarrel with appellee's statement that penal statutes should be strictly construed. And we do not contend that Section 1001 applies to false statements made to the House Disbursing Office simply because they are "as deserving of condemnation as false statements made to an

executive officer" (Appellee Br. 25). The cases cited by appellee, therefore, are not in point.

Appellee asks this Court to repeal by implication the protection of the false-statements statute which he concedes Congress afforded its own disbursing agencies until 1934. He asks the Court to do this, notwithstanding the total absence of any affirmative evidence that Congress intended to accomplish this result and in the face of abundant evidence to the contrary.

Of course, the word "agency" could be used to describe agencies in the executive branch only. In a number of sections of the Code, Congress has done just that and explicitly limited the meaning of the word "agency" to agencies "in the executive branch." Instances are cited at p. 9, *supra*. In the false-statements statute, however, Congress has used the word without any such qualification under circumstances which indicate, we think conclusively, that the word was intended to cover, as the statute states, "any * * * agency of the United States" (18 U. S. C. 1001). No canon of construction requires that the words of a criminal statute be given their narrowest possible meaning. "There is no canon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions from or loopholes in it." *Kordel* v. *United States*, 335 U. S. 345, 348–349. Penal laws are not to be construed so strictly as to defeat the obvious intent of the

624, 628; *United States* v. *Alpers*, 338 U. S. 680; *United States* v. *Corbett*, 215 U. S. 233; *United States* v. *Brown*, 333 U. S. 18, rehearing denied, 333 U. S. 850. Thus Mr. Justice Story, said, in an oft-quoted passage[16] from his opinion on circuit in *United States* v. *Winn*, 3 Sumn. 209, 28 Fed. Cas. No. 16,740 (C. C. D. Mass.):

> I agree to that rule in its true and sober sense; and that is, that penal statutes are not to be enlarged by implication, or extended to cases not obviously within their words and purport. But where the words are general, and include various classes of persons, I know of no authority, which would justify the court in restricting them to one class, or in giving them the narrowest interpretation, where the mischief to be redressed by the statute is equally applicable to all of them. *And where a word is used in a statute, which has various known significations, I know of no rule, that requires the court to adopt one in preference to another, simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word.* In short, it appears to me, that the proper course in all these cases, is to search out and follow the true intent of the legislature, and to adopt that sense of the words, which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature. [Emphasis supplied.]

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[16] See, e. g., *Johnson* v. *So. Pacific Co.*, 196 U. S. 18.

Cf. *Steele* v. *United States No. 2*, 267 U. S. 505; 40 Op. A. G. 294.

The primary object of the false-statements statute was and is the protection of funds which the United States holds in public trust. Its provisions from its inception were broad and sweeping and its history has been one of constant expansion. The very comprehensiveness of the language used indicates an effort on the part of Congress to make the remedy as broad as the evil. The discussion of Chief Justice Hughes writing for the Court in *United States* v. *Gilliland*, 312 U. S. 86, is apposite. There the Court rejected the contention that the false-statements statute as amended in 1934 (see pp. 3–4, *supra*) should be "restricted by construction so as to apply only to matters of a nature similar to those with which other provisions [of the false-statements statute] deal * * * that is, to matters in which the Government has some financial or proprietary interest," and explained (*id.* 93):

> The statute [by the 1934 amendment] was made to embrace false and fraudulent statements or representations where these were knowingly and willfully used in documents or affidavits "in any matter within the jurisdiction of any department or agency of the United States." In this, there was no restriction to cases involving pecuniary or property loss to the government. The amendment indicated the congressional intent to protect the authorized functions of governmental departments and

agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction.

The rule of *ejusdem generis* is a familiar and useful one in interpreting words by the association in which they are found, but it gives no warrant for narrowing alternative provisions which the legislature has adopted with the purpose of affording added safeguards. "The rule of '*ejusdem generis*' is applied as an aid in ascertaining the intention of the legislature, not to subvert it when ascertained." *Texas* v. *United States*, 292 U. S. 522, 534.

If the language of the amended section could be deemed ambiguous, the legislative history of the amendment would dispel any doubt as to the congressional purpose.

So here, we think that the language of present 18 U. S. C. 1001 is clear. But if it could be deemed to be ambiguous, as urged by appellee, the legislative history of the false-statements statute and the Congressional and administrative practice with respect to the House Disbursing Office "would dispel any doubt as to the congressional purpose."

It is often said that the rule of strict construction derives from "the purpose fairly to apprise men of the boundaries of the prohibited action."[9] Here, there can be no suggestion that

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[9] *See Kordel* v. *United States*, 335 U. S. 345, 349.

appellee did not have fair warning that it was unlawful to submit false statements to the House Disbursing Office. In 1948, Romney, then Sergeant at Arms of the House, was convicted of submitting false statements to the General Accounting Office, an agency of the legislative branch. This was a notorious event. Appellee was a member of the House at that time, and participated in the corrective legislation in which Congress once again recognized the status of their disbursing officers as fiscal agencies of the Government and indeed referred to them as "legislative agencies." But appellee now insists that Congress in 1934, or at least in 1948 (he is not sure which), withdrew the protection of the false-statements statute from not only the House Disbursing Office, but from all other legislative agencies as well. No rule of strict construction would permit or require the Court so to frustrate the plain intent of Congress.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

CHARLES F. BARBER,
Special Assistant to the Attorney General.

BEATRICE ROSENBERG,
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FEBRUARY 1955.

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No. 159

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT,

v.

ERNEST KING BRAMBLETT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

SIMON E. SOBELOFF,
Solicitor General,
WARREN OLNEY III,
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted pursuant to the request of the Court made in the course of oral argument on February 7, 1955.

1. The indictment herein was drawn, the case was tried, the jury charged, and the verdict of guilty found on the theory that defendant had violated the false-statements statute, 18 U.S.C. 1001, in that he had submitted to the House Disbursing Office a clerk-hire form falsely designating one Margaret Swanson as his clerk, when he knew that she was not his clerk, and that he had wilfully continued the false designation in full force and effect

during the period covered by the indictment for the purpose of converting to his own use the compensation authorized for such clerk. For reasons we have stated to the Court in our briefs and on oral argument, we believe that the false-statements statute plainly embraces the false statements made by appellee to the House Disbursing Office, an agency of the United States. If we are correct in this construction of the false-statements statute, the judgment below should be reversed, and the Court need go no further.

On oral argument, counsel were invited to submit memoranda on the question whether, despite the fact that the case had been tried on the assumption that the false-statements statute was applicable, the conviction could be sustained on the ground that the indictment charged and the proof established a violation of the false-claims statute, 18 U. S. C. 287. A decision for the Government on this latter ground, without more, might lead to further proceedings on remand, involving additional litigation and attendant delays. To avoid such a result, we respectfully suggest that, unless this Court should first determine that 18 U. S. C. 1001 fails to protect legislative agencies, including the House Disbursing Office, from wilful false statements, it should not pass upon the applicability of the false-claims statute.

2. The false-claims statute, 18 U. S. C. 287, reads as follows:

> Whoever makes or presents to any person or officer in the civil, military, or naval service

> of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

In relevant part, the elements of the crime of making a false claim thus consist of:

> (a) Presenting to any person in the civil service of the United States;
>
> (b) Any claim upon or against the United States;
>
> (c) Knowing such claim to be false.

We believe that the indictment before the Court in this case charges facts which make out an offense under the false-claims statute.[1] Thus the indictment (R. 1-4) charges that:

> (a) Appellee presented a clerk-hire allowance form to the House Disbursing Office;
>
> (b) The designation was made in order to convert to his own use the compensation authorized for Margaret Swanson, being at the rate of $4700 per annum;
>
> (c) The designation was made knowingly to falsify a material fact, that is, to represent

[1] Under 18 U.S.C. 2, whoever aids and abets the commission of a crime or wilfully causes an act to be done, which if performed by him would be an offense against the United States, is punishable as a principal.

> that Margaret Swanson was his clerk and entitled to receive compensation, and the false designation was knowingly continued in full force and effect throughout the designated pay periods.[2]

It is thus apparent that the facts charged in the indictment establish each of the elements of an offense under the false-claims statute. Moreover, since it was necessary for the Government to prove each of these facts in order to make out a violation of the false-statements statute, it is apparent that the problems of proof and evidence confronting the defendant were in all respects identical to those which would have confronted the defendant had the Government explicitly been proceeding under the false-claims statute.

Examination of the trial court's charge to the jury in this case confirms this conclusion. Thus the Court charged that, in order to return a verdict of guilty, the jury must find as a fact, beyond a reasonable doubt, from all the evidence (Tr. 702, App. ~~41~~ 57):[3]

> "(1) that the defendant presented the clerk-hire form dated August 27, 1949, to the

[2] Wilful failure to withdraw the false clerk-hire designation in continuation of his purpose to convert to his own use the compensation authorized for Mrs. Swanson during each succeeding pay period is the legal equivalent of wilfully making a false claim in each such succeeding pay period. *United States* v. *Giles*, 300 U.S. 41.

[3] For the convenience of the Court, the charge of the trial court (omitting the general paragraphs) is set forth in full in the appendix hereto.

Disbursing Office of the House of Representatives, and

"(2) that, on June 30, 1950, he knowingly and wilfully permitted to continue in full force and effect the representation made therein that Margaret M. Swanson was, during June, 1950, a clerk to him in the discharge of his official and representative duties and entitled to receive compensation, and

"(3) that during that month defendant knew that she did not perform any such official and representative duties."

It will be noted that the trial court's instructions to the jury required it, in order to return a verdict of guilty, to find as a fact each of the elements required to establish violation of the false-claims statute.

The decisions of this Court make it clear that, in the circumstances of this case, the judgment of conviction can be sustained on the ground that the indictment charges and the proof establishes a violation of the false-claims statute, 18 U.S.C. 287, even though that statute was not specifically cited in the indictment, and notwithstanding the fact that the indictment was patently framed with 18 U. S. C. 1001 in mind.

In *Williams* v. *United States*, 168 U. S. 382, for for example, the indictment bore an endorsement that it had been brought under a section of the Revised Statutes which made it unlawful for every officer "appointed and acting under the authority

of any revenue law of the United States" to extort money under color of law (*id.* 386-387). Defendant, who was a Chinese inspector charged with extorting money from a person of Chinese descent seeking entry into the United States, demurred to the indictment. The trial court overruled the demurrer. On appeal, this Court held that since Chinese inspectors had no connection with the revenue system, the prosecution could not be sustained under the cited statute. But this Court viewed the question presented as being "whether these prosecutions are authorized by *any* existing statute of the United States" (*id.* 385) (emphasis added), and sustained the indictment on the ground that the facts alleged made out a violation of another statute applicable to "Every officer of the United States who is guilty of extortion under color of his office" (*id.* 388). In this connection the Court said (*id.* 389):

> It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges made are embraced by some statute in force . . . We must look to the indictment itself, and if it properly charges an offence under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offence charged was covered by a different statute.

Accord: *United States* v. *Nixon*, 235 U. S. 231; *Hammer* v. *United States*, 271 U. S. 620, 625; cf.

Prussian v. *United States*, 282 U. S. 675. See, further, Mr. Justice Frankfurter, dissenting in *Rosenberg* v. *United States*, 346 U. S. 273, 306.

The decisions of this Court which might be regarded as suggesting a contrary rule are distinguishable.

In *United States* v. *Stafoff*, 260 U. S. 477, this Court considered whether a prosecution based on an indictment which had been founded under certain revenue statutes which the Court held had been (as of the date in question) repealed by the National Prohibition Act, should be remanded for judgment and sentence under that Act inasmuch as facts could be spelled out that might fall within that Act. In holding that such a disposition of the case would be unjust, the Court stressed that the National Prohibition Act was "a law of fundamentally different policy" from the statutes under which the prosecutions were brought (*id.* 481). In the instant case, the two statutes involved, as applied to monetary frauds, are founded on precisely the same policy and directed at the same evil (see Govt. Main Br. 17-25).

Cole v. *Arkansas*, 333 U.S. 196, involved a very different factual situation from that involved in the instant case. There the defendant was charged under a statute which made it an offense (*id.* 198):

> . . . [a] for any person acting in concert with one or more other persons, to assemble at or near any place where a "labor dispute" exists and by force or violence prevent . . . any person from engaging in any lawful voca-

> tion, or [b] for any person acting . . . in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage.

The information was framed under part b of this statute. On appeal to the Supreme Court of Arkansas following conviction, defendant raised objections to the validity of this statute under the United States Constitution. The Supreme Court of Arkansas, however, did not decide these questions, but sustained the conviction on the ground that the information had charged and the evidence had shown that petitioners had violated a different section of the Act which made it an offense (*id.* 199, n. 2):

> . . . for any person by the use of force and violence, or threat of the use of force or violence, to prevent or attempt to prevent any person from engaging in any lawful vocation . . .

This Court reversed the judgment of the Supreme Court of Arkansas on the ground that this procedure violated procedural due process in that Section 2 charged "an offense which is distinctly and substantially different from the offense charged in § 1" (id. 202).[4]

[4] The Court also noted that the judge had charged the jury that "petitioners were on trial for the offense of promoting an unlawful assemblage, not for the offense 'of using force and violence' " In the instant case, the jury was required under

In the instant case, by contrast, appellee has been indicted, tried, and convicted of an offense which is identical in all respects, on the facts charged in the indictment and found by the jury, to the offense under 18 U. S. C. 287 of presenting a false claim. The difference between the offenses defined by the two statutes, as applied to the facts of this case, is purely verbal. For the reasons we have indicated, the problem of proof and evidence confronting appellee under this indictment would be precisely the same, whether it were considered as drawn under one statute or the other. The fact that the indictment was expressly framed with the false-statements statute in mind could in no way have prejudiced his defense. Under the charge as given the jury, the jury could not have convicted appellee unless it found as a fact the elements which also constituted an offense under the false-claims statute. Accordingly, unlike *Cole* v. *Arkansas*, *supra*, it would not impair appellee's right to a fair trial and to defend himself upon the charges against him for this Court to sustain the indictment under the false-claims statute and to hold, further, that the jury's verdict of guilt, reached upon correct instructions and supported by the evidence, was adequate to sustain his conviction under that statute. *See Williams* v. *United States*, 168 U. S. at 389. However, as indicated at the outset of this memorandum, the Government

the charge in order to return a verdict of guilty to find as facts each of the elements of the offense under the false-claims statute, 18 U. S. C. 287 (see pp. 3-4, *supra*).

believes that appellee's conviction under the false-statements statute was correct in all respects and should be affirmed without consideration of the applicability to this case of the false-claims statute.

Respectfully submitted.

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FEBRUARY 11, 1955.

APPENDIX

EXCERPT FROM TRANSCRIPT FILED IN

UNITED STATES

v.

ERNEST K. BRAMBLETT

CRIM. No. 971-53 (D. C. D. C.),

February 9, 1954

[Transcript 694]

CHARGE TO THE JURY

THE COURT (Bastian, J.): [general paragraphs omitted]. [Transcript 698]

Now, what is the charge in this case and what is the statute under which the defendant stands indicted? There are, as I told you this morning, only seven counts of the indictment that you are to consider. The remaining counts have been eliminated by the Court. The fact that those counts have been eliminated is not to be taken as prejudicial either for or against the Government or for or against the defendant. And any testimony that has heretofore been introduced having to do with the counts other than those from one to seven, you are to disregard. You told me this morning by the nods of your heads that they will be disregarded. [699] the testimony with regard to them will be disregarded by you, and I trust you to do that.

Now, Count No. 1 of the indictment, which is similar to the remaining six of the seven counts, is as follows:

> "In order to accomplish the purpose of a scheme, defendant Ernest King Bramblett, on or about August 27, 1949, as a Member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a clerk-hire allowance form dated August 27, 1949, in which he designated Margaret M. Swanson to be a clerk to him in the discharge of his official and representative duties to take effect beginning September 1, 1949, said clerk to receive compensation at the basic rate of $4,700.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this clerk-hire allowance form to be paid to Margaret M. Swanson.
>
> "Defendant Bramblett, having so presented said clerk-hire allowance form, did, on or about June 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department or agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a [700] material fact, by knowingly and wilfully continuing in full force and effect up to and including June 30, 1950, the designation contained in said document. The material

fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during June, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation as such, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew."

Count 2 is in similar form, having to do with the employment, or alleged employment, during July 1950; Count 3, during August, 1950; Count 4, during September, 1950; Count 5 during October, 1950; Count 6, during November, 1950; and Count 7, during December, 1950.

The statute under which the defendant stands charged is what we call Section 1001 of Title 18 of the United States Code, which reads as follows:

"Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false [701] writing or document, knowing the same to contain any falsehood, fictitious or fraudulent statement or entry, should be punished as the law provides."

I instruct you that the term "wilfully" means purposefully and deliberately.

Now, the Government's instruction on this point which I granted is as follows:

"This indictment now contains seven counts or charges of violations of the same criminal statute, which is Section 1001, Title 18, United States Code. All of the counts are similar in nature. Each count charges that the defendant knowingly and wilfully falsified by his scheme a material fact contained in a clerk-hire form presented to the Disbursing Office of the House of Representatives, when he designated Margaret M. Swanson to be a clerk to defendant in the discharge of his official and representative duties and to receive a salary in a stated amount.

"The Government claims with relation to these seven counts relating to Margaret M. Swanson, that the clerk-hire form dated August 27, 1949, presented by defendant to the Disbursing Office of the House of Representatives, was never superseded or voided by defendant and that he knowingly and wilfully continued in full force and effect up to and including June 30, 1950, and for the next six paydays, the designation of Mar-
[702] garet M. Swanson as his clerk. It is provided by law that clerks to members shall be paid in accordance with the designation of the clerk-hire form unless it is changed in writing by the member before the tenth of the month.

"The indictment charges that the material fact falsified by defendant was the representation that Margaret M. Swanson, during the particular month, was a clerk to the defendant in the discharge of his official and representative duties and was entitled to receive compensation.

"I instruct you as a matter of law that such a representation of fact would be material.

"If you find, beyond a reasonable doubt, from all the evidence, (1) that the defendant presented the clerk-hire form dated August 27, 1949, to the Disbursing Office of the House of Representatives, and (2) that, on June 30, 1950, he knowingly and wilfully permitted to continue in full force and effect the representation made therein that Margaret M. Swanson was, during June, 1950, a clerk to him in the discharge of his official and representative duties and entitled to receive compensation, and (3) that during that month defendant knew that she did not perform any such official and representative duties, then
[703] your verdict would be guilty on Count 1.

"And similarly for Counts 2, 3, 4, 5, 6 and 7, which also relate to Margaret M. Swanson and which are the same as Count 1 except that each charges a succeeding month."

The defendant has asked that I charge you as follows:

> "You are instructed as a matter of law that you cannot return a verdict of guilty under any of the first seven counts of this indictment — of course there are only seven counts — unless you are convinced beyond a reasonable doubt that defendant knowingly and wilfully falsified the status of Margaret M. Swanson at the time specified in such counts. You cannot return a verdict of guilty under any of these counts, therefore, unless you are persuaded to a moral certainty both that Margaret M. Swanson was performing no services for the defendant in the discharge of his official duties during the period covered by the count in the question and that the defendant knew she was performing no such services at that time."

Now, the defendant has asked that I give you this instruction:

> "You are instructed as a matter of law that an accomplice is a person who knowingly and voluntarily cooperates with, aids, assists, advises, or encourages another in the commission of a crime.
>
> "You are instructed that the testimony of an accomplice should be received with suspicion, with the very greatest care and caution. The degree of credibility which should given [sic] such testimony is a matter exclusively

[704]

within the province of the jury, and you may accept the testimony of an accomplice. In fact, the jury has a right to convict a person on the sole uncorroborated testimony of an accomplice if the jury believes the accomplice. The accomplice in the commission of a crime is a competent witness. An accomplice is anyone who knowingly and voluntarily cooperates with, aids, assists, advises, or encourages another in the commission of a crime, regardless of his degree of participation. No matter how small the degree may be, a person who aids another in the commission of a crime is an accomplice."

Now, ladies and gentlemen, if I should have said the same thing in any of these instructions in different or varying ways, it is not to be understood that I am in any way emphasizing that particular proposition of law. You are to consider my charge as a whole and not any particular part to be extracted therefrom, and not to have any idea that I have in any way emphasized any particular instruction that I have given you.

Also, you will note that I have commented very little on the evidence. I have done that be-
[705] cause counsel have very ably done it. They have given you their views of it. You heard it all. I want to be just as careful in the trial of these cases not to give you any idea as to any feeling on the fact that I want to be sure that you will take the law as I give it to you as the law to be applied,

whether you agree with it or not, because you must take the law from me whether you agree with the law as I give it to you or not. And I am bound to take the facts as you find them, whether I agree with those or not.

Now, I want you to take this matter and consider it deliberately in the light of the instructions which I have given you, using the same ordinary common sense and ordinary intelligence which you would employ in determining any other important matter that you have occasion to decide in the course of your every-day life.

You will return a separate verdict on each of the counts, and in each instance your verdict must be either guilty or not guilty.

You also know that it is necessary that your verdict is by the unanimous vote of the twelve regular jurors.

After I have given counsel an opportunity [706] to speak with me, you will retire and you will elect a foreman or forewoman, and when you have reached a verdict make known that fact by knocking on the jury door.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 159

UNITED STATES OF AMERICA,
Appellant

vs.

ERNEST KING BRAMBLETT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO AFFIRM

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Action No. 971-53

UNITED STATES OF AMERICA

vs.

ERNEST KING BRAMBLETT

MOTION TO AFFIRM

Pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellee moves that the judgment of the District Court be affirmed, on the ground that the question on which the decision of the cause depends is so unsubstantial as to require no further argument.

This is a direct appeal from an order of the United States District Court for the District of Columbia entered on April 14, 1954, which granted appellee's motion in arrest of judgment. A copy of the opinion of the District Court, which has not yet been reported, is appended to appellant's jurisdictional statement. Appeal papers were filed and served upon appellee on May 13, 1954.

Appellee was indicted on June 17, 1953, in eighteen counts, each of which charged that he wilfully falsified by a scheme a material fact, in a matter within the jurisdiction of a department and agency of the United States namely, the Dis-

bursing Office of the House of Representatives, in violation of 18 U.S.C. § 1001. Each of these counts alleged that appellee either filed or left on file with the Disbursing Office a so called Clerk Hire form, which designated a given individual to be a clerk to him in the discharge of his official duties, whereas in fact that individual was not such a clerk.

The District Court entered a judgment of acquittal on eleven counts at the close of the government's case. The jury found appellee guilty under the remaining seven counts. The court then granted appellee's motion in arrest of judgment on the ground that the indictment failed to charge an offense, because the Disbursing Office of the House of Representatives is not a department or agency of the United States within the meaning of 18 U.S.C. §1001.

Statutes Involved

18 U.S.C. §1001 provides as follows:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

18 U.S.C. §6 provides as follows:

"As used in this title:

> "The term 'department' means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

"The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense."

Summary of Argument

Appellee has been indicted for violation of 18 U.S.C. §1001, which makes it a crime to falsify a material fact "in any matter within the jurisdiction of any department or agency of the United States." The term "department" has been defined for the purposes of Title 18 to mean the executive departments enumerated in 5 U.S.C. §1, which are the so-called Cabinet departments. 18 U.S.C. §6. The term "agency" has been defined for the purposes of Title 18 to mean "any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest." 18 U.S.C. §6.

The Disbursing Office of the House of Representatives is neither a "department" nor an "agency" of the United States within the meaning of the foregoing statutes. It is the duty of the Clerk of the House to disburse each Member's clerk hire allowance to those designated by that Member as his clerks. 2 U.S.C. § 92; Rules of the House of Representatives, Rule III. The particular section of the Clerk's office which discharges this duty is known as the Disbursing Office. See testimony of Harry Newlin Megill, which forms part of the record in this case.

It is clear that the office of the Clerk of the House is not one of the executive departments enumerated in 5 U.S.C. § 1, and hence that it is not a "department" within the meaning of 18 U.S.C. § 6. It is likewise clear that this office is not an "agency" within the meaning of § 6, for the term

"agency" as there defined is applicable solely to the executive branch of the government.

The legislative history of 18 U.S.C. § 1001 proves beyond dispute that Congress meant what it said when it restricted the applicability of this statute to the executive branch of the government. Any other conclusion would in effect nullify the perjury statute, 18 U.S.C. § 1621. Moreover, even if the matter were doubtful—which it is not—§ 1001 could not be stretched to cover the legislative branch because of the universally accepted rule that penal statutes must be strictly construed.

Consequently, since the only offense alleged in this case is the falsification of certain facts within the jurisdiction of the Disbursing Office of the House of Representatives, and since this office is neither a "department" nor an "agency" of the United States, the indictment fails to state any violation of 18 U.S.C. § 1001. There is no contention that it states a violation of any other federal statute. The court below, therefore, properly granted appellee's motion in arrest of judgment.

Argument

1. *Disbursing Office Not a "Department"*

In order to reach a proper disposition of this case, it is necessary to consider the legal character of the Disbursing Office of the House of Representatives. The Clerk of the House of Representatives is elected at the beginning of each Congress. He is charged with the duty of disbursing each Member's clerk hire allowance to those designated by the Member as his clerks. 2 U.S.C. § 92; Rules of the House of Representatives, Rule III. The Disbursing Office is the particular section of the Clerk's office which performs this duty. See testimony of Harry Newlin Megill, which forms part of the record in this case.

A so-called Clerk Hire form filed with the Disbursing Office of the House, therefore, is in legal effect filed with the Clerk of the House. The sole question for decision on this appeal thus becomes whether the Clerk is a department or agency of the United States within the meaning of 18 U.S.C. § 1001.

The word "department" is defined for the purposes of Title 18 by 18 U.S.C. § 6, which provides:

> "The term 'department' means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government."

It is of course evident that neither Congress nor any office thereof is one of the executive departments enumerated in Title 5, for these departments include only the so-called Cabinet departments. It is likewise clear that there is nothing in the context of 18 U.S.C. § 1001 which remotely suggests that the term "department" was intended to describe the executive, legislative, or judicial branches of the government.

"Context" as defined by Webster's New International Dictionary (1939 ed.), means "[t]he part or parts of a discourse preceding or following a 'text' or passage or a word, or so intimately associated with it as to throw light upon its meaning." If, for example, Congress passed a statute dealing with the compensation of employees of the federal judiciary which referred at one point to "employees of such department," it would be plain from the context that the term "department" had reference to the judicial branch of the government. Comparison of § 1001 with such an example makes it abundantly clear that there is here no context indicating that the term "department"

signifies anything other than the executive departments enumerated in Title 5.

2. *Disbursing Office Not an "Agency"*

The meaning of the term "agency", as used in Title 18, is also defined by §6 thereof, which states:

> "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, *unless the context shows that such term was intended to be used in a more limited sense.*" (Emphasis added.)

Not even by a strained and unnatural interpretation of the foregoing language can the Clerk of the House of Representatives be brought within its terms. This definition was plainly framed for the sole purpose of providing a simple designation for all of the ramifications of the executive branch of the government, many of which are independent of the Cabinet departments. The definition employs apt words to describe the Civil Service Commission, the Tennessee Valley Authority, and the National Labor Relations Board. It certainly does not describe the Clerk of the House of Representatives.

That this failure was intentional is conclusively demonstrated by the reviser's notes. Particularly illuminating is the note following 18 U. S. C. §296, which states:

> "*To clarify meaning of 'executive department'* word 'executive' before 'department' was deleted and *words 'or agency' were inserted* after it." (Emphasis added.)

The reviser's language following §§286, 287, and 437 is quite similar to the foregoing, stating that the word "agency" was inserted "to clarify" the meaning of the

word "department" or "departments". It is clear that the term "department" as used in each of these statutes has reference only to the executive departments enumerated in Title 5.

The notes following § 201, 602, and 607 are slightly different but equally pertinent. The reviser there states that the word "agency" was inserted to cover "independent agencies or Government owned or controlled corporations." Obviously neither of these categories embraces legislative or judicial officers.

The reviser has thus unequivocally stated that the signification of the term "agency" is limited to the executive branch of the government. The almost conclusive weight of such authority has been repeatedly recognized by this Court. *Western P. R. Corp.* v. *Western P. R. Co.*, 345 U. S. 247, 255; *United States* v. *National City Lines*, 337 U. S. 78, 81; *Ex parte Collett*, 337 U. S. 55.

If further evidence is needed, however, it may be found in definitions of the term "agency" in other parts of the Code, which indicate a uniform understanding on the part of Congress that this term constitutes an apt description of executive instrumentalities alone. While these definitions are not applicable as such to Title 18, they indicate the common signification of the term, which is the framework in which the definition of § 6 must operate.

The first of these definitions is found in 5 U. S. C. § 139 (c), which states:

> "The term 'Federal agency' means any *executive* department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration *in the executive branch of the Government*." (Emphasis added.)

Another is found in 5 U. S. C. §1001, which states:

> "'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States *other than Congress, the courts*, or the governments of the possessions, Territories, or the District of Columbia." (Emphasis added.)

22 U. S. C. §802 gives the following definition:

> "'Government agency' means any *executive* department, board, bureau, commission, or other agency *in the executive branch of the Federal Government*, or any corporation wholly owned (either directly or through one or more corporations) by the United States;" (Emphasis added.)

Similar language is found in 41 U.S.C. §103:

> "The term 'Government agency' means any *executive* department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States *in the executive branch of the Government*, and includes any contracting agency." (Emphasis added.)

The same language appears in 42 U.S.C. §1818:

> "The term 'Government agency' means any *executive* department, commission, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, *in the executive branch of the Government*." (Emphasis added.)

44 U.S.C. §304 provides:

> "[T]he terms 'Federal agency' or 'agency' mean the President of the United States, or any *executive* department, independent board, establishment, bureau, agency, institution, commission or separate office *of the administrative branch of the Government* of the

United States *but not the legislative or judicial branches of the Government;*" (Emphasis added.)

See also 31 U.S.C. §665, 42 U.S.C. §1855a, and 50 U.S.C. §403 a, which contain language similar to that of the foregoing statutes.

The decided cases also reveal a uniform understanding that the term "agency" is not applicable to all three branches of the government. In *Bush Terminal Buildings Co.* v. *Comm'r*, 204 F. 2d 575, for example, the Second Circuit held that a federal constitutional court having jurisdiction of the taxpayer's reorganization proceedings was not "any Federal agency authorized to exercise regulatory power over such corporation," within the meaning of §22 (b) (9) (B) of the Revenue Act of 1939, c. 247, 53 Stat. 862. Likewise, in *United States* v. *Adams*, 115 F. Supp. 721, the court held that a federal court was not a "department, agency, court martial, officer, or any civil, military or naval commission," within the meaning of 18 U.S.C. §281.

The case of *Romney* v. *United States*, 167 F. 2d 521, cert. denied 334 U. S. 847, does not support the government's position for two reasons. In the first place, the applicability of the statute to the legislative branch of the government was not discussed. This Court recently reiterated that no case may be considered authority on an issue not raised. *L. A. Tucker Truck Lines* v. *United States*, 344 U. S. 33.

Moreover, revised Title 18 did not go into effect until after the *Romney* case was decided. There was in existence at that time no predecessor of present 18 U.S.C. §6. The terms "department" and "agency" had not been statutorily defined for the purposes of Title 18. Nor was present 18 U.S.C. §1001 yet in existence. The *Romney* case manifestly cannot constitute authority upon the meaning of a statute enacted *after* it was handed down.

3. Legislative Intent behind 18 U.S.C. §1001

The legislative history of §1001 clearly demonstrates that Congress did not intend it to apply to the legislative and judicial branches of the government. The Act of March 4, 1909, c. 321, §35, 35 Stat. 1095, as amended by the Act of October 23, 1918, c. 194, 40 Stat. 1015, made it a crime to present any false claim "to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder," or to make any false statement "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder."

This Act was amended by the Act of June 18, 1934, c. 587, 48 Stat. 996. The 1934 Act left unchanged the provisions of the earlier law regarding false claims, but it amended the false statement provision to embrace such statements made "in any matter within the jurisdiction of any department or agency of the United States," eliminating the requirement of relationship to a false claim or intent to defraud.

The purpose of this Amendment, as set out in S. Rep. No. 1202, 73rd Cong., 2d sess., was as follows:

> "The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of 'hot' oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to actual wages paid."

The language here in question was thus adopted solely to cover evils in the executive branch of the government.

It is highly significant that the first part of the 1909 Act, which is now 18 U.S.C. § 287, refers to persons and officers in the civil, military, or naval service of the United States, while the 1934 amendment to that Act, which is now § 1001, contains no such language. Officers of the legislative and judicial branches of the government probably fall within the scope of this language. Its omission from the 1934 amendment strongly indicates that Congress did not intend § 1001 to cover statements made to such persons. Moreover, when Congress intends a statute to extend to the legislative branch of the government, it usually so states in positive terms. 18 U.S.C. § 201, for example applies to:

> "any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, . . ."

Similar language is set forth in 18 U.S.C. § 202, which is made applicable to:

> "Whoever, being an officer or employee of, or person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, . . ."

The language of 18 U.S.C. § 1505 is likewise illuminating.

> "Whoever corruptly, or by threats or force, or by any threatening letter or communication endeavors to influence, intimidate, or impede any witness in any

> proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; . . ."

If, as urged by appellant, Congress were a department and agency of the United States, there would be no occasion for these statutes to refer *both* to departments and agencies *and* to Congress. It may consequently be concluded that Congress does not understand the phrase "department or agency" to embrace the legislative branch of the government.

4. *Consequences of Appellant's Position*

Any other conclusion would lead to consequences which could not possibly have been intended by Congress. The maximum penalty prescribed for perjury under 18 U.S.C. § 1621 is five years imprisonment and $2,000 fine, while the maximum penalty under § 1001 is five years imprisonment and $10,000 fine. If § 1001 were applicable to false statements made to any branch of the federal government, this statute would provide a heavier penalty for perjury than the perjury statute itself. And this penalty could be imposed upon witnesses in federal courts or before congressional committees regardles of whether they had been duly sworn and regardless of whether the government had complied with the "two witness" rule. The very fact that no such attempt has been made in the twenty years since the predecessor of § 1001 was first enacted is almost conclusive evidence that the statute does not extend to the legislative or the judiciary. See *United States* v. *Williams*, 341 U.S. 70, 81; *F.P.C.* v. *Panhandle E.P.L. Co.*, 337 U.S. 498, 513-514; *United States* v. *Cooper Corp.*, 312 U.S. 600, 613-614; *F.T.C.* v. *Bunte Bros.*, 312 U.S. 349, 35-352.

Appellant cannot avoid this issue by suggesting that, while the Clerk of the House is an "agency" within the meaning of 18 U.S.C. § 6, the House itself is not. If, as suggested in appellant's jurisdictional statement, the Clerk's office is an "authority" of the United States, there is no reason whatsoever to suppose that the House itself, and every committee of the House, is not also an "authority" of the United States. Unless that term is restricted to the executive department, it cannot logically be restricted at all, but must embrace every organ of federal power, including Congress and the courts.

5. *Applicable Principles of Statutory Construction*

In interpreting § 1001, we must remember that we are dealing with a penal statute. It has always been axiomatic that there are no constructive offenses. Before a man can be punished, his conduct must be plainly and unmistakably within the prohibition of the statute. He may not be condemned for an offense which the statute, though inadvertently, has omitted to condemn, although the court is convinced that the legislature, if it had thought about the matter, would have employed broader language. Cases illustrating these principles include *United States* v. *Halseth*, 342 U.S. 277; *M. Kraus & Bros.* v. *United States*, 327 U.S. 614, *Viereck* v. *United States*, 318 U.S. 236; *Pierce* v. *United States*, 314 U. S. 306; *United States* v. *Resnick*, 299 U. S. 207; *McBoyle* v. *United States*, 283 U. S. 25; *United States* v. *Fruit Growers Express Co.*, 279 U. S. 363; *Krickman* v. *United States*, 256 U. S. 363; *United States* v. *Weitzel*, 246 U. S. 533; *United States* v. *Harris*, 177 U. S. 305; *United States* v. *Wiltberger*, 5 Wheat. 76; *Fasulo* v. *United States*, 272 U. S. 620.

As Mr. Justice Holmes stated in the McBoyle case, at 283 U. S. 27-28:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders

> or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. . . . [T]he statute should not be extended . . . simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used."

In *Harrison* v. *Vose*, 9 How. 372, 378, the rule was stated in the following language, which is very similar to that employed by the court below:

> "In the construction of a penal statute, it is well settled, also, that all reasonable doubts concerning its meaning ought to operate in favor of the respondent [defendant]."

While the prosecution contends that appellee's conduct was within the prohibition of §1001, it cannot seriously contend that his conduct was *plainly* and *unmistakably* within the prohibition of this statute. Nor can it contend with honesty that the question is free from grave doubt. Consequently, under the rule of the foregoing cases, the judgment of the court below must be affirmed.

Conclusion

It is thus clear that the Disbursing Office of the House of Representatives, which is a part of the office of the Clerk of the House, is neither a department nor an agency of the United States within the meaning of 18 U.S.C. §1001, because these terms apply only to the executive branch of the government. There is affirmative evidence that this conclusion comports with the legislative intent behind this statute.

If in fact §1001 were applicable to all three branches of the government, the perjury statute would have long ago passed into oblivion. The fact that this has not occurred demonstrates irrefutably the fallacy of appellant's position.

Since §1001 is a penal statute, moreover, the judgment of the court below would have to be affirmed even if there were grave uncertainty regarding the applicability of this statute to the Disbursing Office of the House of Representatives. While appellant contends that the statute covers this case, it cannot seriously contend that the matter is free from grave uncertainty. Consequently, since it is obvious that appellee's conduct was not plainly and unmistakably within the prohibition of the law, there is no necessity for further argument in this case.

WHEREFORE, appellee moves that the judgment of the District Court should be affirmed.

Respectfully submitted,

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No. 159

IN THE

Supreme Court of the United States

October Term, 1954

UNITED STATES OF AMERICA, *Appellant*

v.

ERNEST KING BRAMBLETT

On Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLEE

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UNITED STATES OF AMERICA, *Appellant*

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ERNEST KING BRAMBLETT

On Appeal from the United States District Court for the District of Columbia

---

BRIEF FOR APPELLEE

SUMMARY OF ARGUMENT

The United States District Court for the District of Columbia has granted appellee's motion in arrest of judgment on the ground that the indictment under which he was tried does not charge any offense against the laws of the United States. (R. 9-20.) This indictment alleges that appellee made certain false statements "in a matter within the jurisdiction of a department and agency of

the United States, namely the . . . Disbursing Office of the House of Representatives," in violation of 18 U.S.C. § 1001. (R. 1-8.) Appellee's position is that the Disbursing Office of the House of Representatives is neither a department nor an agency of the United States within the meaning of this statute.

The phrase "department or agency of the United States" has been statutorily defined for the purposes of Title 18 by 18 U.S.C. § 6. This section states that the term "department" refers solely to the so-called Cabinet departments, unless the context demonstrates an intent to describe the executive, legislative, or judicial branches of the government. The same section goes on to state that the term "agency" refers to federal departments, independent establishments, commissions, administrations, authorities, boards, bureaus, and corporations.

A statement made to the Disbursing Office of the House of Representatives is in legal effect made to the Clerk of the House. The Disbursing Office is nothing more nor less than a part of the Clerk's office. It is obvious that the Clerk is neither a "department" nor an "agency" of the United States within the meaning of § 6, because both of these terms as there defined refer exclusively to the executive branch of the government, and the Clerk is part of the legislative branch of the government.

The Reviser's notes to Title 18 demonstrate beyond dispute that this position is in accord with the legislative intent. Many sections of Title 18, moreover, refer specifically *both* to departments and agencies *and* to Congress, which would scarcely be the case if Congress were itself a "department" or an "agency" of the United States. Appellee's position on this issue finds further support in numerous definitions of the term "agency" throughout the United States Code, which indicate that Congress has never regarded this term as an apt description of legislative officers. This conclusion is reinforced by the relevant case law.

Any other result would in effect nullify the perjury laws. If § 1001 covers false statements made to any branch of the federal government, it covers perjury before congressional committees and federal courts. Since this statute carries a heavier penalty than the perjury statute and is not subject to the "two-witness" rule, it is obvious that the perjury laws would long ago have passed into oblivion if appellant's pretaise were correct.

Appellant's attempt to avoid this dilemma by fabricating a definition of the term "agency" which covers the Disbursing Office but not congressional committees or federal courts must fail, because it ignores both the common understanding of the term and the statutory definition of § 6.

There is no occasion to consider the legislative history of § 1001 in this case because its terms, when read in conjunction with the definitions of § 6, are completely free from ambiguity. The background of this statute, however, actually supports appellee's contention that it was intended to apply to the executive branch of the government alone.

Finally, it must be remembered that § 1001 is a penal statute. Under the canons of construction governing such statutes, this Court must be able to say that appellee's acts were plainly and unmistakably within the terms of this statute before it can reinstate his conviction. He cannot be sentenced for an offense which the Congress, though inadvertently, has omitted to condemn, although this Court may be convinced that Congress, if it had thought about the matter, would have employed broader language.

ARGUMENT

I.

The Disbursing Office of the House of Representatives Is Not a "Department or Agency of the United States" Within the Meaning of 18 U.S.C. §1001

The decision in this case hinges upon the legal character of the Disbursing Office of the House of Representatives. This office is concededly a part of the office of the Clerk of the House of Representatives. The Clerk is an officer of the House, elected by the Members at the beginning of each Congress and charged by them with the duty of disbursing their clerk hire allowance to those designated by them as their clerks. 2 U.S.C. § 92; Rules of the House of Representatives, Rule III. The section of the Clerk's office which performs this function is known as the Disbursing Office. (R. 24.) A so-called Clerk Hire form filed with the Disbursing Office of the House, therefore, is in legal effect filed with the Clerk himself. The sole question for decision on this appeal thus becomes whether the Clerk is a "department or agency of the United States" within the meaning of 18 U.S.C. § 1001.

The term "department" is defined for the purposes of Title 18 by § 6 thereof, which provides in part:

> "The term 'department' means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government."

It is, of course, evident that neither Congress nor any officer thereof is one of the executive departments enumerated in Title 5, because these departments include only the so-called Cabinet departments. It is likewise clear that there is nothing in the context of 18 U.S.C. § 1001 which remotely suggests that the term "department" was intended to describe the executive, legislative, or judicial branches of the government. Appellant does not

seriously urge to the contrary, preferring rather to rest upon the contention that the Clerk of the House is an "agency" within the meaning of 18 U.S.C., § 1001.

The term "agency" is similarly defined for the purposes of Title 18 by § 6 thereof, which provides in part:

> "The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, *unless the context shows that such term was intended to be used in a more limited sense.*" (Emphasis added.)

Not even by a strained and unnatural interpretation of the foregoing language can the Clerk of the House of Representatives be brought within its terms. This definition was plainly framed for the sole purpose of providing a simple designation for all of the ramifications of the executive branch of the government, many of which are independent of the Cabinet departments. The definition employs apt words to describe the Civil Service Commission, the Maritime Administration, the Tennessee Valley Authority, the National Labor Relations Board, the National Bureau of Standards, and the Reconstruction Finance Corporation. It certainly does not employ apt words to describe the Clerk of the House of Representatives.

The Reviser's notes to Title 18 demonstrate conclusively that Congress never intended this definition to embrace such officers as the Clerk of the House of Representatives. This Court has repeatedly recognized the very great weight which must be accorded to such authority. *Western P. R. Corp.* v. *Western P. R. Co.*, 345 U.S. 247, 255; *United States* v. *National City Lines*, 337 U.S. 78, 81; *Ex parte Collett*, 337 U.S. 55. As stated in the *National City Lines* case, the Reviser's notes are "obviously authoritative in perceiving the meaning of the Code."

Particularly illuminating is the Reviser's note following 18 U.S.C. § 290, a criminal statute which deals with illegal withholding of military discharge papers and which employs the phrase "any department or agency of the United States":

> "*To clarify meaning of 'executive department'* word 'executive' before 'department' was deleted and *words 'or agency' were inserted after it.*" (Emphasis added.)

If Congress thought it was *clarifying* the meaning of the phrase "executive department" by deleting the word "executive" and adding the words "or agency," so that the phrase became "department or agency," it is absolutely certain that Congress understood the word "agency" as applicable to offshoots of the executive branch of the government, and of the executive branch of the government alone. Otherwise, Congress would have been *expanding* the phrase "executive department" when it deleted the word "executive" and added the words "or agency." The Reviser, however, makes it abundantly clear that there was no intention of expanding this section by the foregoing changes, and hence that the signification of the term "agency" must be limited to the executive branch of the government alone.

Another Reviser's note of great significance follows 18 U.S.C. § 201, a criminal statute which deals with bribery and which employs the phrase "department or agency":

> "Section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words 'or any department or agency thereof', and by substituting words 'such department or agency' for 'department or office of the Government thereof'.
>
> * * * * *
>
> "When Congress enacted this section as a part of the 1909 Criminal Code, *the present ramifications of the executive branch were not foreseen*, and, consequently, the language proved inadequate to cover

> every new agency as indicated by the holding in the Strang case. [United States v. Strang, 254 U.S. 491, holding that the predecessor of this statute did not cover a Government-owned or controlled corporation.]" (Emphasis added.)

The foregoing language constitutes a clear statement of the legislative purpose behind utilization of the term "agency." This term was defined in 18 U.S.C. § 6 and employed in countless sections of Title 18 solely to provide a simple designation for "ramifications of the executive branch," such as "independent agencies" and "Government-owned or controlled corporations." Of course none of these terms are applicable to the Clerk of the House of Representatives.

Somewhat similar to the foregoing are the notes appended to 18 U.S.C. §§ 602 and 607, which are criminal statutes dealing with political contributions by government employees. Both of these statutes contain the phrase "department or agency." The note to § 602 states:

> "This section, like section 201 of this title, was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words 'or any department or agency thereof.'"

The note to § 607 reads in part:

> "This section was expanded to embrace all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations by inserting words 'or any department or agency thereof.'"

Of course legislative and judicial officers are neither "independent agencies" nor "Government-owned or controlled corporations." These notes thus show again that the term "agency" was never intended to embrace such officers.

Two other notes of interest state that the term "agency" was inserted in lieu of the word "bureau." 18 U.S.C. § 281 makes it a crime for certain persons to accept compensation in matters affecting the government, while 18 U.S.C. § 284 makes it a crime for former federal employees to prosecute certain claims against the government. Both of these statutes employ the term "agency." The note to § 281 states:

> "Words 'or any department or agency thereof' were inserted and word 'agency' was substituted for 'bureau' to clarify scope of section."

The note to § 284 states:

> "The word 'agency', as used in said section 119, sixth paragraph, of Title 41, was used in preference to the word 'bureau' which appeared in said section 100 of Title 5."

Here again, it is obvious that legislative and judicial officers are not government "bureaus," and hence that the term "agency" is not understood by Congress to embrace such officers.

Three other pertinent notes state that the term "agency" was inserted in lieu of the word "department" or "departments." 18 U.S.C. §§ 286 and 287 deal with false claims against the government, while 18 U.S.C. § 437 prohibits government employees from holding any interest in certain contracts. All three of these statutes employ the phrase "department or agency." The note to § 286 states:

> "To clarify meaning of 'department' the word 'agency' was inserted after it."

The note to § 287 states:

> "To clarify meaning of 'department' words 'agency' and 'or agency' were inserted after it."

The note to § 437 states:

> "To clarify scope of section words 'department or agency' were substituted for 'of the departments'."

It is obvious that legislative and judicial officers are not "departments" of the federal government within the meaning of the foregoing statutes. Consequently, Congress would never have utilized the term "agency" *to clarify* the meaning of the term "department" if it had believed that the former term embraced such officers.

Another note of interest is appended to 18 U.S.C. § 701, which deals with misuse of official insignia and which employs the phrase "any department or agency of the United States." The Reviser stated with reference to this section:

> "The term 'department or agency' was substituted for 'department or independent office' in two places to embrace all properly constituted agencies as defined in section 6 of this title and to eliminate any possible ambiguity as to scope of section."

Patently, no legislative or judicial officer can be considered a "department" or an "independent office" of the federal government.

Also significant is the note appended to 18 U.S.C. § 1505, which deals with influencing witnesses before designated tribunals and which uses the phrase "any department or agency of the United States." The note following this statute states:

> "Word 'agency' was substituted for the words 'independent establishment, board, commission' in two instances to eliminate any possible ambiguity as to scope of section."

Here again, no legislative or judicial officer can be considered an "independent establishment, board, commission" of the federal government.

The Reviser has thus unequivocally stated that the signification of the term "agency" is limited to the executive branch of the government alone. As pointed out above, such authority is entitled to almost conclusive weight in a case of this nature.

Appellee's position on this issue derives further support from the fact that many sections of Title 18 expressly refer *both* to departments and agencies *and* to Congress. For example, 18 U.S.C. § 201, a criminal statute dealing with the offense of bribery, applies to:

> ". . . any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, . . ."

18 U.S.C. § 202, which likewise deals with bribery, employs similar language:

> "Whoever, being an officer or employee of, or person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, . . ."

The language of 18 U.S.C. § 283, dealing with prosecution of claims against the government by government employees, is also illuminating:

> "Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, . . ."

Another section of interest is 18 U.S.C. § 1505, which deals with influencing witnesses before certain bodies. This statute reads in part:

> "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors

> to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; . . ."

If, as urged by appellant, Congress and its officers were agencies of the United States within the meaning of 18 U.S.C. § 6, there would be no occasion for these statutes to refer *both* to agencies *and* to Congress. It may consequently be concluded that Congress does not understand the phrase "department or agency" to embrace the legislative branch of the government.

18 U.S.C. § 6 does not contain the only definition of the term "agency" to be found in the United States Code. Numerous other definitions of this term demonstrate a general understanding on the part of Congress that it constitutes an apt description of executive instrumentalities alone. While these definitions are not applicable as such to 18 U.S.C. § 1001, they do buttress appellee's contention that Congress does not employ this term when it wants to describe a legislative or judicial officer.

The first definition of interest is found in 5 U.S.C. § 139c, which states:

> "The term 'Federal agency' means any *executive* department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration *in the executive branch of the Government; . . .*" (Emphasis added.)

Another definition of this term is found in 5 U.S.C. § 1001:

> "'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States *other than Congress, the courts,* or the governments of the posses-

sions, Territories, or the District of Columbia." (Emphasis added.)

Still another such definition is found in 22 U.S.C. § 802:

> "'Government agency' means any *executive* department, board, bureau, commission, or other agency *in the executive branch of the Federal Government*, or any corporation wholly owned (either directly or through one or more corporations) by the United States: . . ." (Emphasis added.)

Similar language is contained in 31 U.S.C. § 665:

> "When used in this section, the term 'agency' means any *executive* department, agency, commission, authority, administration, board, or other independent establishment *in the executive branch of the Government*, including any corporation wholly or partly owned by the United States which is an instrumentality of the United States." (Emphasis added.)

Of like import is 41 U.S.C. § 103:

> "The term 'Government agency' means any *executive* department of the Government, or any administrative unit or subdivision thereof, any independent agency or any corporation owned or controlled by the United States *in the executive branch of the Government*, and includes any contracting agency." (Emphasis added.)

Two significant definitions appear in Title 42. Section 1818 of this Title provides:

> "The term 'Government agency' means any *executive* department, commission, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, *in the executive branch of the Government*." (Emphasis added.)

Section 1855a provides:

> "'Federal agency' means any department, independent establishment, Government corporation, or other agency *of the executive branch of the Federal Government*, excepting, however, the American National Red Cross." (Emphasis added.)

44 U.S.C. § 304 is equally explicit:

> "[T]he terms 'Federal agency' or 'agency' mean the President of the United States, or any *executive* department, independent board, establishment, bureau, agency, institution, commission, or separate office *of the administrative branch of the Government* of the United States *but not the legislative or judicial branches of the Government*; . . ." (Emphasis added.)

Finally, 50 U.S.C. § 403a states:

> "'Government agency' means any *executive* department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, *in the executive branch of the Government*; . . ." (Emphasis added.)

The decided cases also reveal a uniform understanding that the term "agency" is not applicable to all three branches of the government. In *Bush Terminal Buildings Co.* v. *Comm'r*, 204 F. 2d 575, for example, the Second Circuit held that a federal constitutional court having jurisdiction of the taxpayer's reorganization proceedings was not "any Federal agency authorized to exercise regulatory power over such corporation," within the meaning of § 215(a) of the Revenue Act of 1939, c. 247, 53 Stat. 862. Likewise, in *United States* v. *Adams*, 115 F. Supp. 731, the court held that a federal court was not a "department, agency, court martial, officer, or any civil, military, or naval commission," within the meaning of

18 U.S.C. § 281. The same result was reached in the more recent case of *United States* v. *Waldin*, 122 F. Supp. 903, which was also decided under 18 U.S.C. § 281.

The case of *Romney* v. *United States*, 167 F. 2d 521, cert. denied 334 U.S. 847, relied upon by appellant's brief, does not in reality constitute authority contrary to appellee's position. There a Sergeant at Arms of the House of Representatives was convicted under the predecessor of 18 U.S.C. § 1001 for making false statements to the General Accounting Office. The decision of the court affirming his conviction cannot be considered a precedent in this case for three reasons.

In the first place, the applicability of the predecessor of 18 U.S.C. § 1001 to the General Accounting Office was not discussed. As this Court recently pointed out in *L. A. Tucker Truck Lines* v. *United States*, 344 U.S. 33, 38, no case may be considered authority on an issue not raised.

In the second place, revised Title 18 did not go into effect until after the *Romney* case was decided. There was in existence when this case was decided no predecessor of present 18 U.S.C. § 6. The terms "department" and "agency" had not been statutorily defined for the purposes of Title 18, nor was present 18 U.S.C. § 1001 yet in existence. The *Romney* case manifestly cannot constitute authority upon the meaning of a statute enacted *after* it was handed down.

In the third place, the General Accounting Office occupies a very different position from the Clerk of the House of Representatives. In certain respects and for certain purposes, this office may be considered part of the legislative branch of the government. In certain other respects, however, it partakes of the nature of an executive instrumentality. For example, it was set up to perform various functions which had previously been performed by the Treasury Department. 31 U.S.C. § 44. Its principal officers, moreover, are appointed by the President with the advice and consent of the Senate. 31

U.S.C. § 42. While it is made independent of the "executive departments" by 31 U.S.C. § 41, this does not mean that it is outside the *executive branch* of the government for the purposes of 18 U.S.C. § 6. The courts might well conclude that it should be considered an "independent establishment" within the meaning of 18 U.S.C. § 6. A decision on this point, however, could shed but little light upon the status of an officer of the House of Representatives, who is neither "independent" nor an "establishment."

Equally inapposite is the case of *United States ex. rel. Marcus* v. *Hess*, 317 U.S. 537, also relied upon by appellant's brief. This was a *qui tam* action under R. S. §§ 3490-3493, which created a right of action against persons who make false claims against the United States. Respondents had fraudulently obtained federal funds from certain state officials in connection with a Public Works Administration project. This Court held that their conduct constituted a false claim against the United States because they obtained federal funds through fraud.

Appellant suggests that the source of the funds allegedly converted in the instant case should likewise be decisive. This respondent, however, has not been convicted of making a false claim. He has been convicted of making a false statement, and the sole question before this Court is whether he made that false statement to a "department or agency of the United States." The origin of the funds, if any, which he may have incidentally converted can have no possible bearing upon the decision of this question. If the appellant desires to predicate its case upon the allegation that appellee converted federal funds, it must indict him for that offense, and not for making false statements.

The position adopted by appellant in this case must also be considered with reference to its effect upon the federal perjury statute, 18 U.S.C. § 1621. The maximum penalty prescribed for perjury under this statute is five

years imprisonment and $2,000 fine. The maximum penalty under § 1001, on the other hand, is five years imprisonment and $10,000 fine. The maximum penalty under the predecessor of § 1001, which was in effect from 1934 until 1948, was ten years imprisonment and $10,000 fine. If in fact § 1001 were applicable to false statements within the jurisdiction of any branch of the federal government, it is obvious that this statute would provide a heavier penalty for perjury than the perjury statute itself. And this penalty could be imposed upon witnesses in federal courts or before congressional committees regardless of whether they had been duly sworn and regardless of whether the government had complied with the "two-witness" rule. The very fact that no such attempt has been made in the twenty years since the predecessor of § 1001 was first enacted is almost conclusive evidence that the statute does not extend to the legislative or the judiciary. See *United States* v. *Williams*, 341 U.S. 70, 81; *F. P. C.* v. *Panhandle E. P. L. Co.*, 337 U.S. 498, 513-514; *United States* v. *Cooper Corp.*, 312 U.S. 600, 613-614; *F. T. C.* v. *Bunte Bros.*, 312 U.S. 349, 351-352.

Appellant attempts to avoid this dilemma by fabricating a definition of the term "agency" which includes the Disbursing Office but not congressional committees or federal courts. This definition, however, is not in accordance with either the common understanding of the term or the statutory definition of 18 U.S.C. § 6.

The term "agency" has two generally accepted definitions which must be considered. It can be used in its broadest sense to designate any person or group of persons acting under the authority of the United States. Any instrumentality of federal power could thus be denominated an "agency" of the United States. This might be characterized as the law of agency definition. It plainly embraces congressional committees and federal courts, as well as the Disbursing Office of the House of Representatives.

The word "agency" can also be used to designate those executive offices commonly known as "federal agencies." When we say, for example, that a man works for a government agency, we mean that he works in the executive branch of the government, and not for Congress or the courts. This might be characterized as the popular definition. It plainly excludes the Disbursing Office of the House of Representatives.

Both of the foregoing definitions are obviously unsatisfactory from appellant's point of view, the first because it includes too much, the second because it includes too little. Appellant has, therefore, tailored a definition which is somewhere in between the law-of-agency definition and the popular definition. Under this definition, the term "agency" must be understood in its "broad generic sense" to cover all instrumentalities of the United States "at least insofar as they act in an administrative, a fiduciary, or a housekeeping capacity." (Appellant's brief, p. 19.) This definition includes the Disbursing Office but excludes both congressional committees and federal courts. Presumably it would include an administrative assistant to a United States Senator but not the Senator himself. Presumably also it would include the Marshal of this Court but not the Justices to whom he is responsible.

Such a definition is obviously very different from the law-of-agency definition and from the popular definition of this term. Appellant urges that it is nevertheless consonant with the language and purpose of 18 U.S.C. § 6. The language of this statute, however, plainly adopts the popular definition of the term "agency." It says that an agency is "any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest." All of these terms have patent reference to those ramifications of the executive branch of the government which are commonly known as government agencies. They do not have refer-

ence to legislative officers who act "in an administrative, a fiduciary, or a housekeeping capacity."

In other words, § 6 requires us to determine whether the Clerk of the House of Representatives forms a part of something generally known as a "department, independent establishment, commission, administration, authority, board or bureau" of the United States. It does not require us to determine whether he is acting on behalf of the United States "in an administrative, a fiduciary, or a housekeeping capacity."

It is, of course, obvious that § 6 does not evidence "a design to throw a protective blanket over all administrative functions of government." (Appellant's brief, p. 12.) This statute is a definitional section intended to apply to every federal criminal statute which uses certain terms. It manifests a legislative intent to formulate a clear and workable definition of these terms. It does not manifest a legislative intent to throw a protective blanket over anything. Consequently, appellant cannot rely upon the legislative purpose behind this statute to sustain its position.

Nor can appellant successfully contend that the Clerk is an "authority" of the United States within the meaning of § 6. Obviously the word "authority" *can* be used to describe a legislative officer, just as it can be used to describe a congressional committee or a federal court. The question here is whether it *was* used to describe legislative officers in § 6. Under the rules of *noscitur a sociis* and *ejusdem generis*, this word must be construed in conjunction with the remaining terms used in defining "agency." All of these terms have patent reference to executive instrumentalities alone. Consequently, absent some compelling evidence to the contrary, it must be concluded that the word "authority" likewise refers to executive instrumentalities alone.

The Reviser's notes to Title 18, the language of Title 18 itself, the language of numerous other Titles of the

Code, and the relevant case law thus overwhelmingly support appellee's conclusion that the Clerk of the House of Representatives is not an "agency" of the United States within the meaning of 18 U.S.C. § 1001. Any other conclusion would necessarily result in abrogating the perjury laws. Appellant cannot avoid this dilemma by tailoring a definition of the term "agency" to meet the exigencies of this particular case, because its definition is contrary both to the common signification of the term and to the statutory definition of 18 U.S.C. §6.

II.

The Legislative History of 18 U.S.C. §1001 Does Not Support the Contention That It Applies to Matters Within the Jurisdiction of the Disbursing Office of the House of Representatives

Where, as here, the language of a statute is completely clear, there is no occasion to consider its legislative history. *Ex parte Collett*, 337 U.S. 55, 61; *Packard Motor Co.* v. *N. L. R. B.*, 330 U.S. 485, 492. The meaning of the term "agency" is set forth in simple and unambiguous language in 18 U.S.C. § 6. The whole purpose of this definitional section was to avoid litigation concerning the scope of criminal statutes and to obviate the necessity of resorting to the legislative history of such statutes to determine their meaning. To this end, Congress employed language which cannot possibly be made any clearer by judicial construction.

The legislative history of § 1001, however, actually supports appellee's position. The history of this statute makes it plain that Congress adopted § 1001 to do for the executive branch what the perjury statute had already done for Congress and the courts.

The Act of March 4, 1909, c. 321, § 35, 35 Stat. 1095, as amended by the Act of October 23, 1918, c. 194, 40 Stat. 1015, made it a crime to present any false claim to "any person or officer in the civil, military, or naval service of

the United States, or any department thereof, or any corporation in which the United States of America is a stockholder," or to make any false statement "for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder."

This Act was amended by the Act of June 18, 1934, c. 587, 48 Stat. 996. The 1934 Act left unchanged the provisions of the earlier law regarding false claims, but it amended the false statement provision to embrace such statements made "in any matter within the jurisdiction of any department or agency of the United States," eliminating the requirement of relationship to a false claim or intent to defraud.

The purpose of this amendment, as set out in S. Rep. No. 1202, 73rd Cong., 2d sess., was as follows:

> "The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of 'hot' oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to actual wages paid."

The language here in question was thus adopted for the sole purpose of protecting the executive branch of the government from fraud and falsehood.

It is highly illuminating to compare the language of the 1934 amendment with the language of the prior law. The first part of the 1909 Act covered false claims made to "any person or officer in the civil, military, or naval service of the United States." It thus covered false claims made to any branch of the federal government. If Con-

gress had desired to punish false statements made to any branch of the federal government when it amended this Act in 1934, the logical course would have been to interdict false statements made to "any person or officer in the civil, military, or naval service of the United States." The fact that Congress eschewed this phraseology and prohibited instead false statements made "in any matter within the jurisdiction of any department or agency of the United States" is strong evidence that Congress did not intend the false statements section to be coextensive with the false claims section. It is strong evidence that Congress recognized and appreciated the danger of superseding the perjury laws by a new statute which covered false statements made to any branch of the federal government.

Appellant's assertion that Congress did not intend to restrict the scope of the coverage clause in this statute to the executive branch is thus the merest speculation. It is far more reasonable to suppose that Congress employed the new "department or agency" phrase, instead of the old "civil, military, or naval service" phrase, because it wanted to restrict the operation of the new statute to the only branch of the government which was then demanding additional protection against fraud and falsehood, namely, the executive branch.

III.

The Penal Character of 18 U.S.C. §1001 Requires This Court to Construe the Word "Agency" As Applicable Solely to the Executive Branch of the Government

It is one of the most basic principles of criminal jurisprudence that a penal statute must be strictly construed. This rule has been so often and so authoritatively reiterated that any citation of cases is almost superfluous. Because of the vital importance of this principle in the case at Bar, however, a cursory survey of the leading decisions seems appropriate.

Perhaps the most luminous exposition of this doctrine is that of Chief Justice Marshall in the case of *United States* v. *Wiltberger*, 5 Wheat. 76, 96, 105. This Court there held that a statute punishing manslaughter committed on the high seas did not apply to manslaughter committed on a river in China, although a companion statute punished the crime of murder committed on the high seas or on a river beyond the jurisdiction of any particular state. The opinion of the Court stated:

> "It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated.
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> * * * * *
>
> ". . . it appears that the argument chiefly relied on, to prove that the words of one section descriptive of the place ought to be incorporated into another, is the extreme improbability that Congress could have intended to make those differences with respect to place, which their words import. We admit that it is extremely improbable. But probability is not a guide which a court, in construing a penal statute, can safely take. We can conceive no reason why other crimes which are not comprehended in this act should not be punished. But Congress has not made them punishable, and this court cannot enlarge the statute."

Another early case of interest is *Harrison* v. *Vose*, 9 How. 372, 378, where the rule was stated in language very similar to that employed by the court below.

> "In the construction of a penal statute, it is well settled, also, that all reasonable doubts concerning its meaning ought to operate in favor of the respondent [defendant]."

This Court has frequently recognized that an act is not punishable under a statute merely because it involves

the type of evil which the statute was designed to remedy. In the case of *Fasulo* v. *United States*, 272 U.S. 620, 628-629, for example, where this Court held that a statute punishing use of the mails to defraud did not cover use of the mails to extort money by threats of murder or bodily harm, it is stated:

> "Undoubtedly the obtaining of money by threats to injure or kill is more reprehensible than cheat, trick or false pretenses; but that is not enough to require the court to hold that a scheme based on such threats is one to defraud within § 215. . . .
>
> ". . . There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute."

A classic opinion on this point was written by Mr. Justice Holmes in *McBoyle* v. *United States*, 283 U.S. 25, 27, where this Court held that a statute prohibiting the transportation of stolen motor vehicles did not apply to the transportation of stolen airplanes, although the term "motor vehicle" was defined to include "any other self-propelled vehicle not designed for running on rails." Mr. Justice Holmes stated:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. . . . [T]he statute should not be extended . . . simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used."

Very similar in many respects to the case at Bar is the case of *Pierce* v. *United States*, 314 U.S. 306. There this Court held that the impersonation of an official of the

Tennessee Valley Authority was not within the purview of a statute dealing with impersonation of "an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof." This case, like the *Fasulo* and *McBoyle* cases, makes it clear that a defendant cannot be punished under a given statute merely because his acts are equally as reprehensible as those which are covered by the plain language of the statute.

Another leading case in this field is *Viereck* v. *United States*, 318 U.S. 236, 243-244, 245, where this Court held that a statute requiring foreign agents to disclose their activities "as agent of a foreign principal" did not require an agent to disclose propaganda activities which merely inured to the benefit of a foreign principal. The opinion of the Court stated:

> "While Congress undoubtedly had a general purpose to regulate agents of foreign principals in the public interest by directing them to register and furnish such information as the Act prescribed, we cannot add to its provisions other requirements merely because we think they might more successfully have effectuated that purpose.
>
> * * * * *
>
> "Even though the specific restriction of § 3(c) were due to defective draftsmanship or to inadvertence, which hardly seems to be the case, men are not subjected to criminal punishment because their conduct offends our patriotic emotions or thwarts a general purpose sought to be effected by specific commands which they have not disobeyed. Nor are they to be held guilty of offenses which the statutes have omitted, though by inadvertence, to define and condemn. For the courts are without authority to repress evil save as the law has proscribed it and then only according to law."

Other cases in point include *United States* v. *Halseth*, 342 U.S. 277; *M. Kraus & Bros.* v. *United States*, 327 U.S. 614; *United States* v. *Resnick*, 299 U.S. 207; *United*

States v. *Fruit Growers Express Co.*, 279 U.S. 363; *Krichman* v. *United States*, 256 U.S. 363; *United States* v. *Weitzel*, 246 U.S. 533; *United States* v. *Harris*, 177 U.S. 305.

These cases make it clear that this Court cannot apply 18 U.S.C. § 1001 in the case at Bar merely because false statements made to a legislative officer are as deserving of condemnation as false statements made to an executive officer. It is not enough that a similar policy applies in both instances, or that Congress, if it had considered the matter, might have employed broader language. Even if the restriction of this statute to the executive branch were the result of inadvertence or defective draftsmanship, the courts are powerless to extend its coverage. Before we can say that the court below erred in arresting judgment, we must find that appellee's conduct was plainly and unmistakably within the actual language of the statute itself.

The foregoing sections of this brief make it clear that the Disbursing Office of the House of Representatives is not plainly and unmistakably within the scope of the term "agency" as defined in 18 U.S.C. § 6. For this reason, the court below properly granted appellee's motion in arrest of judgment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court granting appellee's motion in arrest of judgment should be affirmed.

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